Aging Physicians
&
Cognitive Impairment

WHAT TO DO WITH VALUED, EVEN BELOVED AGING PHYSICIANS, AND WHAT TO DO WITH CONCERNS ABOUT COGNITIVE IMPAIRMENT?

NYSAMSS CONFERENCE MAY 7 – 9, 2025

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Medical Staff Services • Credentialing • Provider Enrollment • Peer Review • Quality • Risk Management

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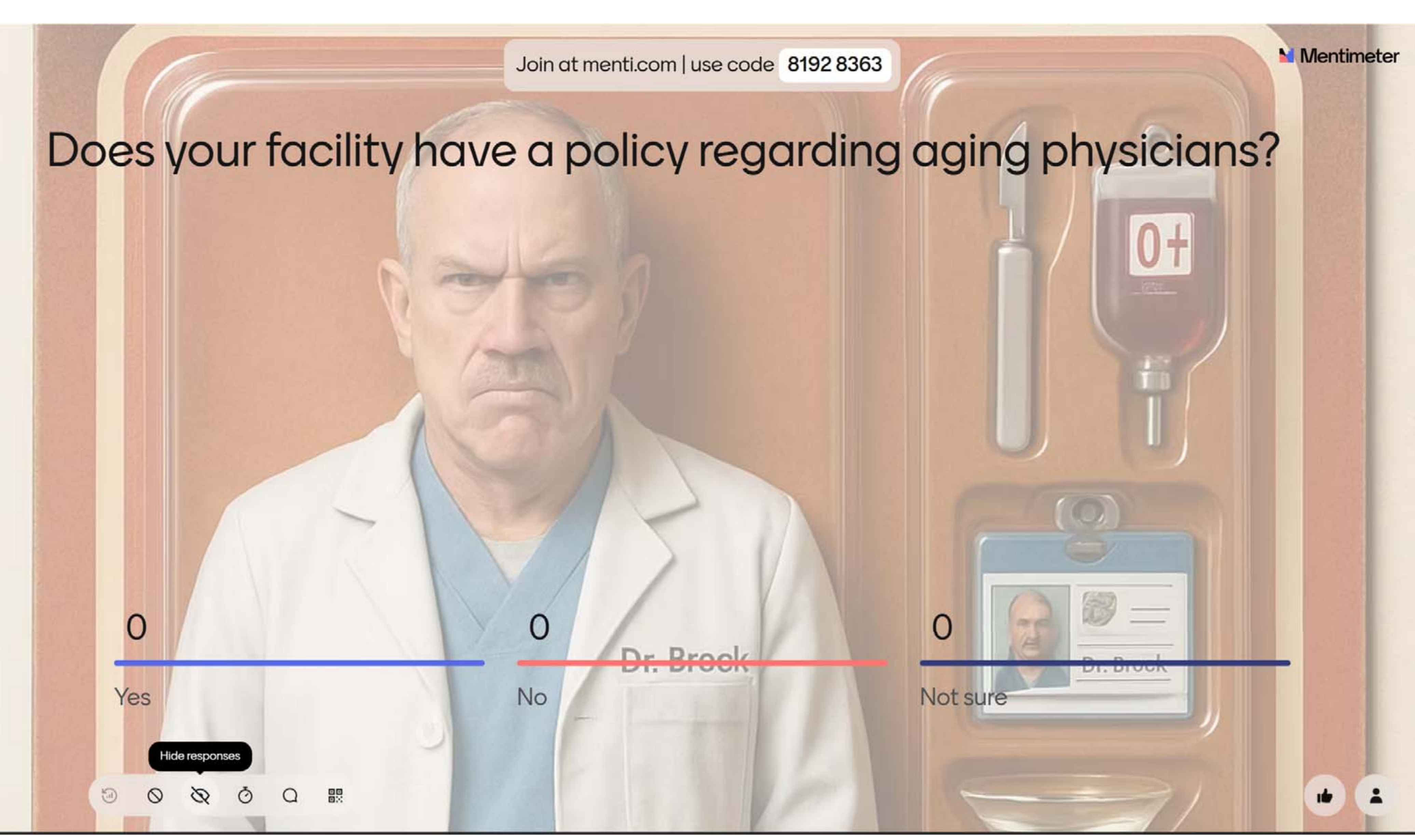
Objectives

1. Review aspects of normal aging
2. Discuss the impact of an aging physician population
3. Identify warning signs of cognitive impairment
4. Discuss cognitive screening controversies
5. Discuss controversies about age-based physician screening



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Does your facility have a policy regarding aging physicians?
0+
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Dr. Brock
Yes
No
Not sure
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Impaired Physicians & APPs

Defining the Issue

"The inability to practice medicine with reasonable skill and safety to patients by reason of physical or mental illness, including deterioration through the aging process, the loss of motor skills, or the excessive use or abuse of drugs, including alcohol."

AMA definition of impaired physician

Not a New Problem

The prevalence of impaired/addicted physicians early in the 20th century was reported to range from 10 – 40%

The Late Career Physician

Too early to retire? Too late?

The New York Times

THE NEW OLD AGE

When Is the Surgeon Too Old to Operate?

A handful of hospitals have instituted mandatory screening procedures for medical professionals over 70. Many have been unenthusiastic about the idea.

In the fall of 2015, Dr. Herbert Dardik, chief of vascular surgery at Englewood Hospital and Medical Center in New Jersey, nodded off in the operating room.

Dr. Dardik, then 80, was not performing the operation. He'd undergone a minor medical procedure himself a few days earlier, so he'd told his patient that another surgeon would handle her carotid endarterectomy.

But when she begged Dr. Dardik at least to be present during the operation, he agreed to sit in. ***"I was really an accessory," he recalled. "It was so boring, I kind of dozed off"*** — whereupon an alarmed nurse-anesthetist reported the incident to administrators.

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The Late Career Physician

Too early to retire? Too late?

Within days, the hospital's chief of anesthesiology and CMO were in Dr. Dardik's office, praising his surgical skill while urging him to reduce his workload.

"I got so annoyed, I stood up and opened the door and said 'Get out,'" Dr. Dardik said. "Who knows better what I can do but myself?"

He also resisted the suggestion that he undergo testing at Sinai Hospital in Baltimore, which had established a two-day program to evaluate whether older surgeons could safely continue practicing.

The New York Times

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Not long afterward, Dr. Dardik was on a plane when its older-looking captain came aboard (FAA regulations mandate a retirement age of 65).

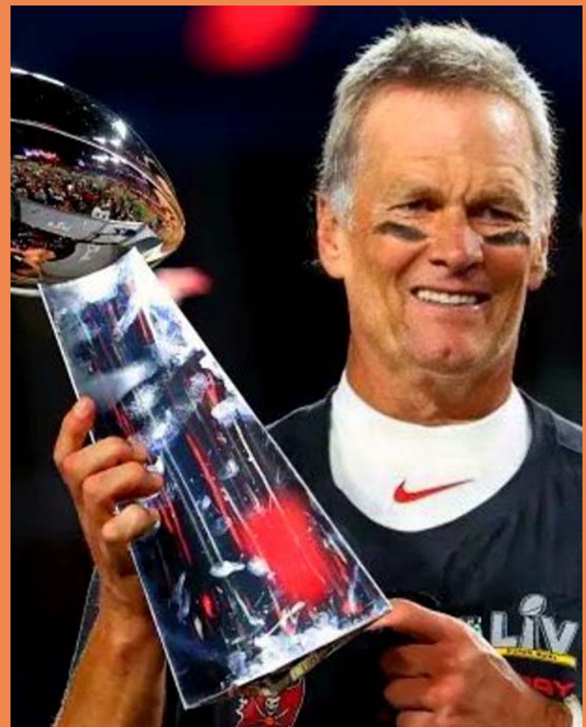
"I hope this guy's still ok," Dr. Dardik remembered thinking. At which point, "it hit me like a hammer – **this is what other people think when they look at me."**

The Late Career Physician

Consideration of Competency Testing

Competency testing of late career physicians – *mandatory or voluntary* – is being considered in the larger context of:

- Rising life expectancies
- Delayed retirement for financial reasons
- Changing societal norms regarding contributions that late-career professionals can make to their professions



Ensuring Clinician Competency

A Medical Staff Responsibility

- ***All*** Medical Staff applicants should be asked to document their ability to exercise the privileges requested safely with or without reasonable accommodation.
- The Joint Commission standards require that the hospital evaluate the health status of physicians who exercise or seek to exercise clinical privileges or other health care services.
- The Americans with Disabilities Act (ADA) prohibits discrimination based on disability and bars discrimination against a qualified individual due to the disability.
- When discussing the issue of the aging provider, it is essential to maintain compliance with state and federal law related to age discrimination.

A Review of Current Processes

Ensuring Clinician Competency

A Medical Staff Responsibility

- Bi- or Tri-annual recredentialing
- Primary source verification
- Peer references
- OPPE / FPPE data and ongoing internal Peer Review
- Patient satisfaction surveys
- Maintenance of Board Certification
- NPDB entries / continuous query
- State Licensing Board sanction & citations
- Criminal background checks

Ensuring Clinician Competency

A Medical Staff Responsibility

Negligent Credentialing

- Knew or should have known about a provider's lack of competency
- Ignored series of unexpected adverse outcomes
- Lack of follow through on reports of health concerns raised by staff
- Growing body of evidence that late-career practitioners can be a potential problem
  - o Clinical care
  - o Behavioral concerns

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EFFECTIVE AND UNIFORMLY APPLIED STANDARDS FOR GRANTING OF PRIVILEGES HELPS AVOID CLAIMS FOR NEGLIGENT CREDENTIALING

Safety Sensitive Employment

The underlying principle for fitness-for-duty assessment is the protection of the public

- Health professions
- Legal profession
- Transportation industry
- Law enforcement

The Late Career Physician

Disincentives for Retirement

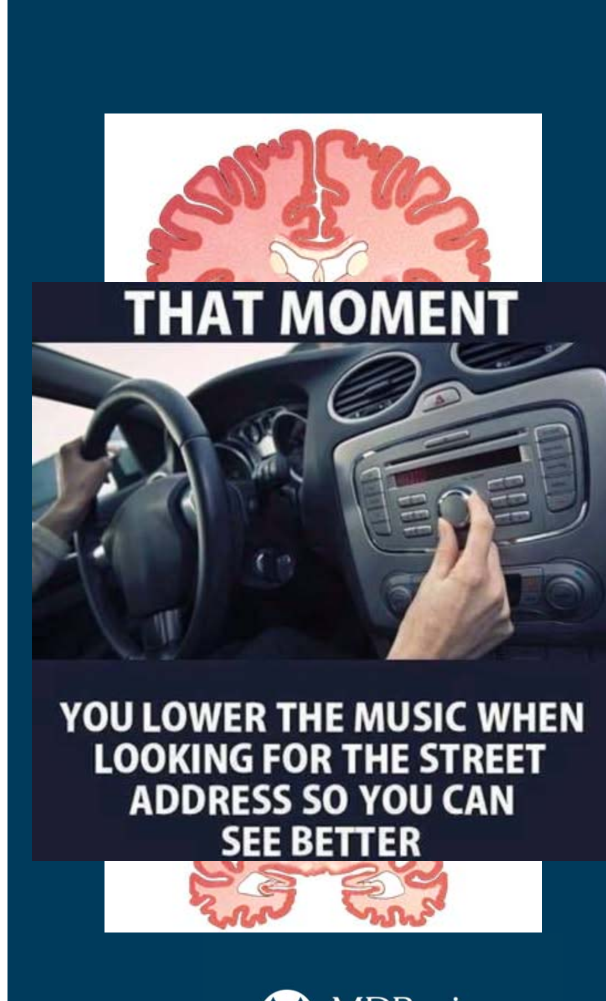
- Baby boomers face financial pressures & may wish to work past traditional retirement age
- In some specialties, the financial reward for working longer will be boosted due to shortages
    - Physician supply < Demand
- Generation X, Generation Y, and Millennials prefer a work-life balance --- will tend to decrease overall physician workforce productivity

Normal Aging – Neuropsychological Changes

- Decision making
  - Differences in how decisions are reached
  - More reliance on prior knowledge
- Changes in memory
  - Recall worse than recognition
  - Slower pace of learning
  - Increased need for repetition
- Decreased speed
  - Processing speed
  - Reaction time
  - Psychomotor speed
  - Fine motor skills/dexterity

The Effects of Aging on Cognitive Function

- <u>Diminished memory</u>
  - o Episodic memory (personally experienced events)
  - o Semantic memory (acquired knowledge)
  - o Working memory (ability to maintain, manipulate, and reorganize information in short-term memory)
- <u>Diminished complex attention</u> (processing 2 or more sources of information at the same time; ability to disregard less relevant stimuli in order to focus on a specific task)



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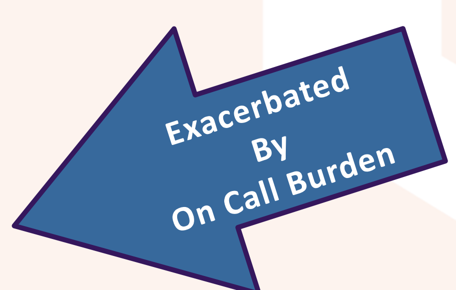
- Diminished complex attention (processing 2 or more sources of information at the same time; ability to disregard less relevant stimuli in order to focus on a specific task)
- Crystallized intelligence, the ability to problem-solve based on *prior* learning and experience, is better preserved with aging than fluid intelligence, which is problem-solving requiring *novel* information or approaches.

Normal Aging Risks for Impairment

These are often treatable conditions



- Earlier waking time
- Difficulty initiating sleep
- More nighttime awakenings
- Lighter sleep
- More difficulty adjusting to shift changes

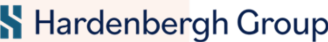
Sensory loss

- Vision
- Hearing

Identifying Cognitive Impairment

Potential clues to cognitive deficits

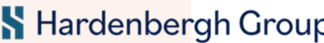
- Disruptive behavior
- Fatigue, stress and burnout
- Decline in clinical performance
- Longer length of stays
- Incomplete medical records, inappropriate comments contained in medical records and documentation errors
- Prescription errors
- Billing mistakes
- Irrational business / patient care decisions
- Skill defects
- Patient complaints
- Office staff / peer observation of deficits
- Patient injuries



Identifying Cognitive Impairment

Potential clues to cognitive deficits

- Lawsuits
- Unsatisfactory Peer Review evaluations
- Failure to keep up with Continuing Medical Education requirements
- Recertification failures
- Decreased processing speed
- Increased difficulty inhibiting irrelevant information
- Decreased hearing and visual acuity
- Decreased manual dexterity
- Decreased visuospatial ability
- Higher mortality rates
- Diagnostic errors
- Use of outdated medications and treatment modalities



Identifying Cognitive Impairment

Potential clues to cognitive deficits

Skill deficit

vs

Knowledge Deficit

vs

Cognitive Deficit?

Questions?

Yale's Late Career Practitioner Policy

A process under legal pressure

Assessing/Maintaining Physician Current Competency

- Medical professionals can – ***and do*** -- experience physical/cognitive decline with aging
- Existing credentialing/peer review/privileging may not identify decline timely enough to ensure patient safety
- *Mandatory retirement age is not a fair or reasonable solution…..is it?*
- Mandatory, practical screening at a specific age would appear to strike a fair balance between patient safety, organizational liability, and provider autonomy and dignity….but is it legal?

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Background

- 1 in 4 US physicians is over 65
  - Represent 15% of the active workforce
- Those aged 55 – 64 make up 27% of the workforce
- Life expectancies increasing
- Financial disincentives to retirement
- Looming physician shortages

Mandatory Retirement Ages

- 56 – Air Traffic Controller
- 57 – Federal Firefighter
- 57 – Federal Law Enforcement
- 65 – Airline Pilot
- Judiciary, Military, Foreign Service, etc.

Is Mandatory Screening of Aging Providers Legal?

EEOC Sues Yale New Haven Hospital for Age and Disability Discrimination

Hospital Unlawfully Subjected Only Physicians Over 70 to Neuropsychological and Eye Exams, Federal Agency Charges

NEW HAVEN - Yale New Haven Hospital, the teaching hospital of the Yale School of Medicine, violated federal law by adopting and implementing a discriminatory "Late Career Practitioner Policy," the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today.

According to the EEOC's lawsuit, the policy requires any individual aged 70 and older who applies for or seeks to renew staff privileges at the hospital to take both neuropsychological and eye medical examinations. Individuals and employees younger than age 70 are not subject to these requirements.

GARRISON LAW REPRESENTS AARP IN LAWSUIT CHALLENGING YALE-NEW HAVEN HOSPITAL POLICY THAT TARGETS OLDER PHYSICIANS

Yale's Late Career Practitioner Policy

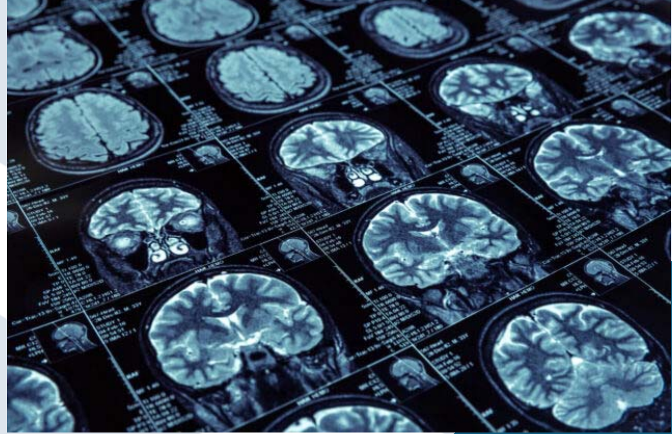
Overview

- Since March 2016, as a condition of appointment, continued appointment and reappointment, MDs, DOs, dentists, podiatrists and certain advanced practice providers who require medical staff clinical privileges and who are 70 years or older must undergo a neuropsychological screening evaluation and a basic ophthalmologic exam.
- The evaluation and exam are conducted thereafter at the time of reappointment.

Yale's Late Career Practitioner Policy

Overview - Testing

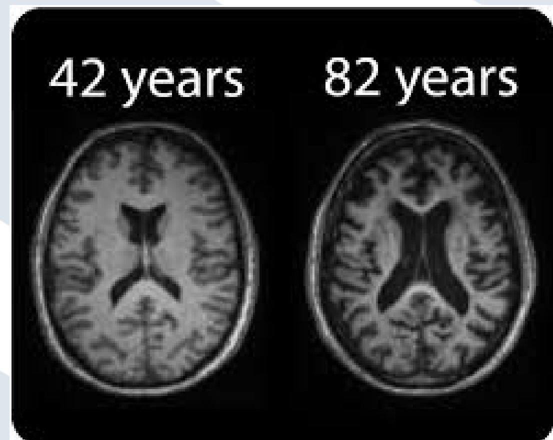
- The cognitive function evaluation includes 16 tests which are administered by a neuropsychologist and focus on the following areas:
  - Information processing
  - Visual scanning & psychomotor efficiency
  - Processing speed & accuracy
  - Working memory
  - Concentration
  - Verbal Fluency
  - Executive function



Yale's Late Career Practitioner Policy

Results

Testing results are reviewed by a Medical Staff committee, which then makes recommendations to the Credentials Committee. ***The physicians are not Hospital employees, but are Yale Medical School faculty members.***

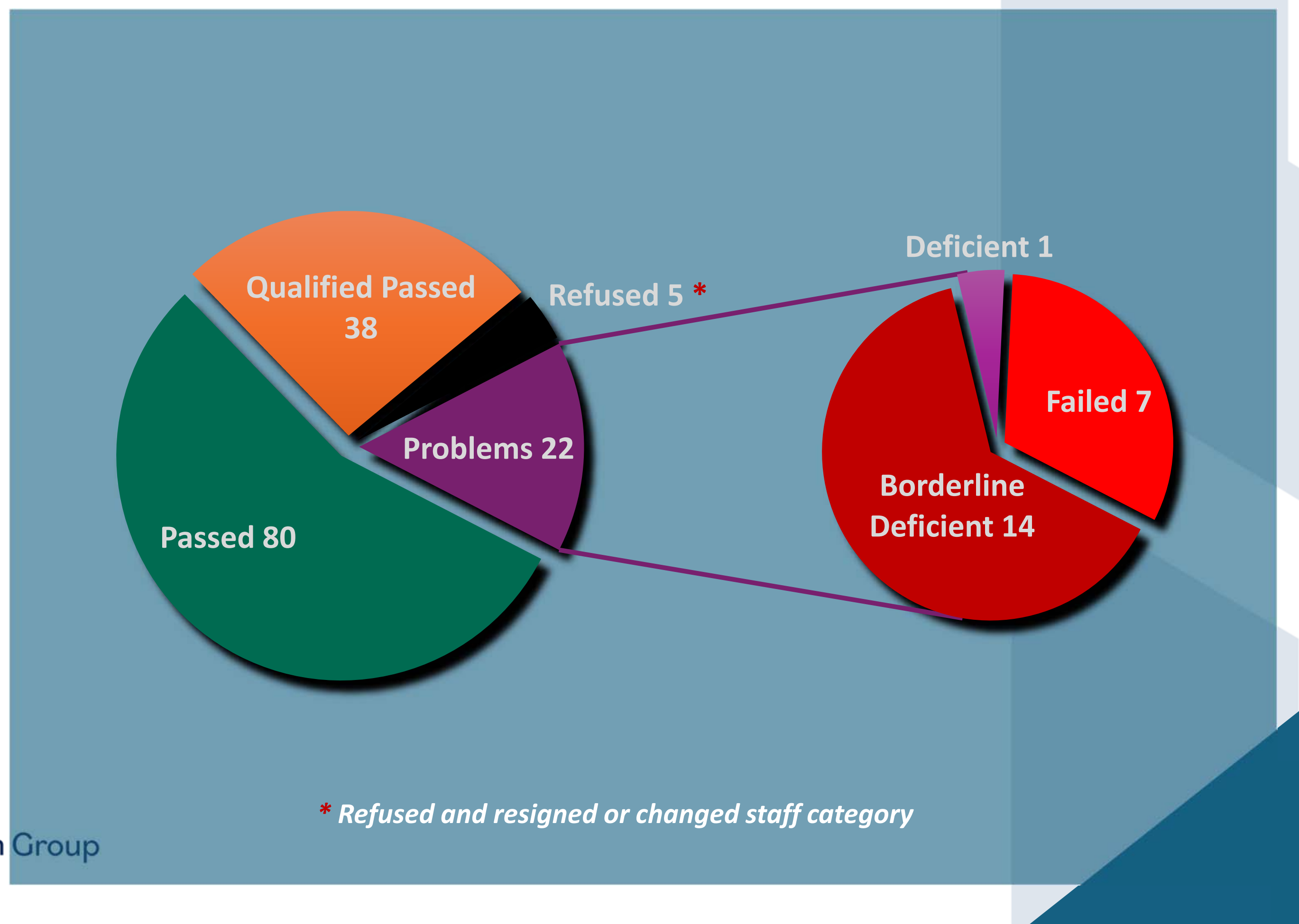


Findings

- As of April, 2019, the Policy was applied to 145 individuals
- The age range was 70 to 84 – average age was 74
- 86% were men and 89% were physicians
  - 14 were listed as "Borderline Deficient"
  - 1 was listed as "Deficient"
  - 7 "Failed"

Yale's Late Career Practitioner Policy

Results



Yale's Late Career Practitioner Policy

Results

21 were retested a second time

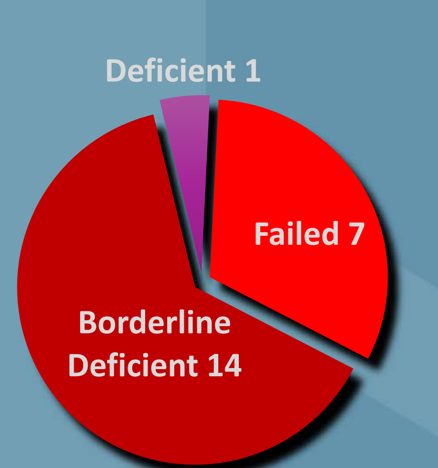
- All "Passed" or "Qualified Passed"

Yale's Late Career Practitioner Policy

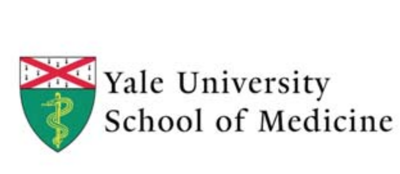
Results

A total of 18 demonstrated cognitive deficits that were likely to impair their ability to practice medicine independently

- ***None*** were independently identified as having performance problems
- ***All*** opted to voluntarily discontinue their practice or move to a closely proctored setting



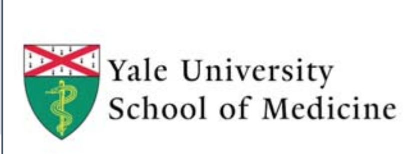
Interrelationship Between Hospital & Yale Medical School



- Hospital and YMS operate under a 100-page Affiliation Agreement
- Agreement fully integrates the operations of both entities
- YMS has a large say on who heads each clinical department
- All YMS faculty with appointments in clinical departments must obtain and maintain medical staff privileges at the Hospital
- Hospital has a comprehensive appointment/reappointment process and ongoing monitoring and peer review procedures including the imposition of an FPPE or similar plan when warranted

EEOC Complaint against Yale-New Haven Hospital

- Plaintiff is a pathologist who filed a charge with the EEOC 30 days prior to filing of the lawsuit alleging violations of the **Age Discrimination in Employment Act**, 29 USC Section 621, et. seq. (**“ADEA”**) and the Americans with Disabilities Act, 42 USC Section 12101, et. seq., as amended by the **Americans with Disabilities Act** Amendment Act of 2008 (**“ADA”**).
- EEOC issued a Letter of Determination finding reasonable cause that the Hospital violated the ADEA and ADA with respect to the Plaintiff and other aggrieved individuals because the Policy only applied to practitioners who were 70 or older rather than to all practitioners irrespective of age.



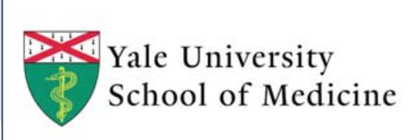
EEOC Complaint against Yale-New Haven Hospital

- EEOC issued a Notice of Failure of Conciliation on October 11, 2019 when efforts to reach an acceptable agreement failed.
- The EEOC Complaint was filed on February 9, 2020, in the U.S. District Court in the District of Connecticut.

EEOC Complaint – *ADEA Basis*

ADEA Claim

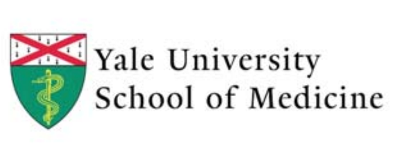
- The ADEA makes it unlawful, among other things, for an employer:
    - To fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, ***because of such individual's age***
    - To limit, segregate, or classify his employees in any way which would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, ***because of such individual's age***



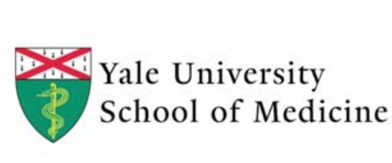
EEOC Complaint – *ADEA Basis*

ADEA Claim

- Because the Hospital Policy applied only to those age 70 or above, the Plaintiff, ***who passed the examinations***, and other employees were subjected to the stigma of being singled out because of their age and to unlawful discrimination and classification of applicants and employees in violation of the ADEA
- The effect of the practices has been to deprive the Plaintiff and a class of applicants and employees age 70 and above of equal employment opportunities and otherwise to affect adversely their status as applicants or employees because of their age
- The unlawful employment practices complained of were willful within the meaning of the ADEA



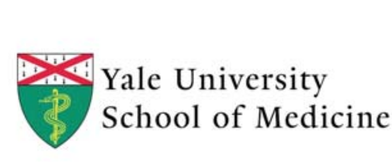
EEOC Complaint – *ADA Basis*



ADA Claims

- The ADA states that an employer "shall not require a medical examination and shall not make inquiries of an employee as to whether such employee in an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity" (42 USC Section 12112(d)(4)(A))
- The Policy's ophthalmologic and neuropsychological exam are medical examinations under the ADA and their use on the Plaintiff and other employees solely on the basis of their age violates the ADA
- The unlawful employment practices complained of were intentional and done with malice or with reckless indifference to the federally protected rights of the Plaintiff

EEOC Complaint – *ADA Basis*



Interference with Rights Protected by ADA

- The ADA makes it unlawful to "interfere with any individual in the exercise or enjoyment of any right granted or protected by [the ADA]"
- Under the ADA, an employee has a right to enjoy employment free from unlawful medical examinations
- By subjecting the Plaintiff and other YSM employees (and employees of other employers) whose employment with YSM (and other employers) requires the receipt and maintenance of medical staff privileges at the Hospital to medical examinations under the Policy, the Hospital has unlawfully interfered with these employer's rights under the ADA

EEOC Complaint - *Comments*

- The EEOC in its EEOC Compliance Manual, Section 2 – Threshold Issues, has a Section entitled “Third-Party Interference with Employment Opportunities.” This Section provides as follows:
  - In addition to prohibiting employers from discriminating against their employees, Title VII, the ADEA, and the ADA prohibit a covered third- party employer from discriminatorily interfering with an individual’s employment opportunities with another employer.
  - While the third-party employer might, in some cases, be a joint employer, the principle described here applies even where an employment relationship has never existed between a third-party employer and the individual. This kind of liability is commonly known as “third-party interference.”

https://www.eeoc.gov/eeoc-guidance

EEOC Complaint - *Comments*

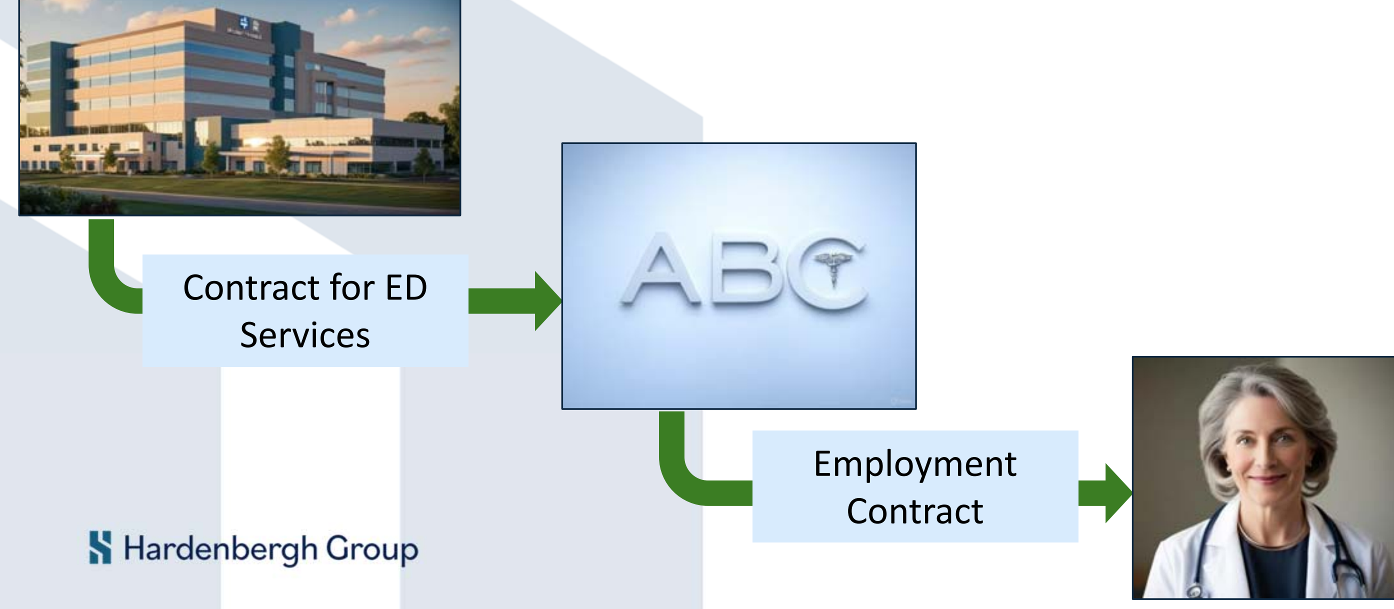
- The EEOC in its EEOC Compliance Manual, Section 2 - Threshold Issues, has a Section entitled “Third-Party Interference with Employment Opportunities.” *continued:*
  - The ADA specifically prohibits interference with rights protected under the statute. While Title VII and the ADEA do not include comparable provisions, they prohibit discrimination against “individuals”. Therefore, a charging party need not necessarily be an employee of the employer that is accused of discriminatory interference.
- The EEOC gives an example of how this third-party interference principle applies in the context of a hospital/physician relationship very similar to its arguments against Yale New Haven Hospital.

https://www.eeoc.gov/eeoc-guidance

EEOC Complaint – *Provided Example*

Respondent is a hospital that receives emergency room services from ABC Medical Corp.

- CP is employed by ABC as the director of Respondent's emergency room.



https://www.eeoc.gov/eeoc-guidance

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EEOC Complaint – *Provided Example*

Respondent is a hospital that receives emergency room services from ABC Medical Corp.

- CP is employed by ABC as the director of Respondent's emergency room.
- CP files a charge alleging that Respondent discriminated against her on the basis of age and sex by asking ABC to replace her with a younger male director.
- Respondent is a covered employer under Title VII and the ADEA. Under these circumstances, CP has a Title VII and ADEA claim against Respondent for interfering with her employment relationship with ABC.
- If Respondent exercises sufficient control over CP, it may also be a joint employer. *

https://www.eeoc.gov/eeoc-guidance

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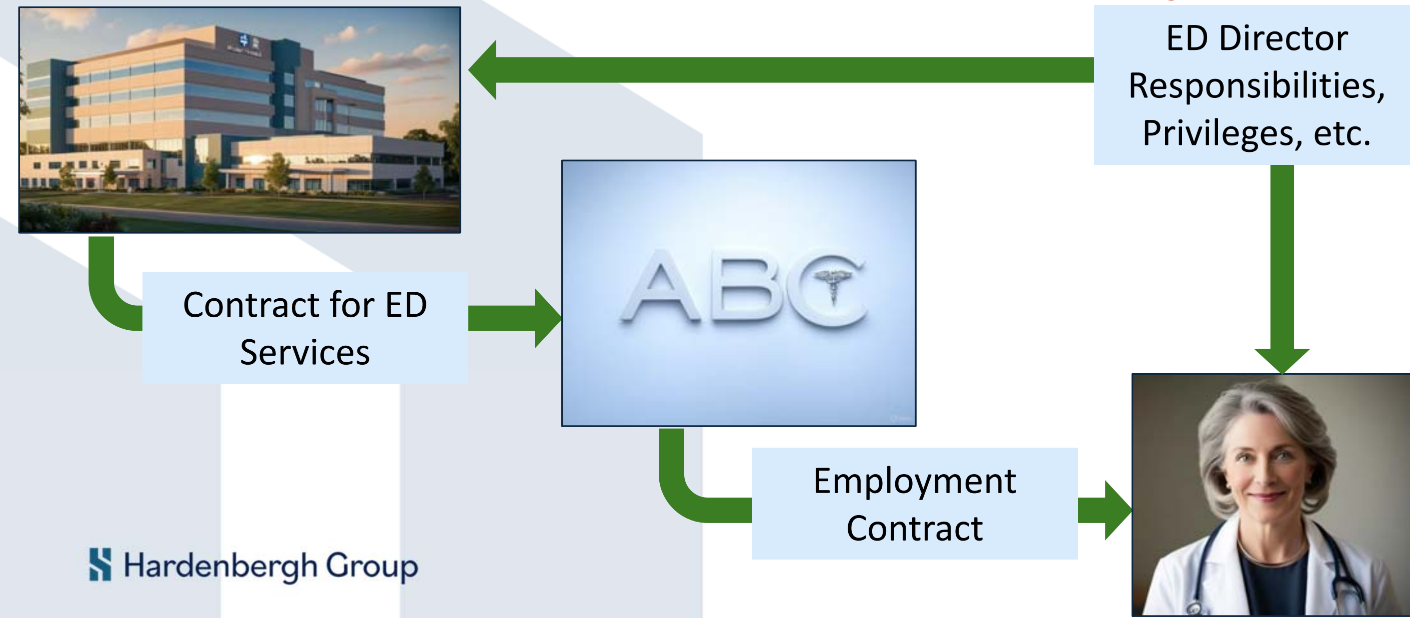

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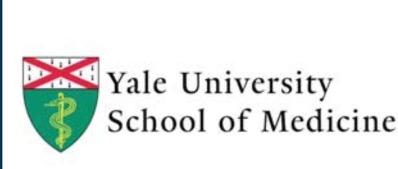
EEOC Complaint – *Provided Example*

- See Enforcement Guidance On Control By Third Parties Over The Employment Relationship Between An Individual And His/Her Direct Employer, EEOC Compliance Manual, Volume II, Appendix 605-F.
- See Sibley Memorial Hospital v. Wilson, 488 F.2d 1338, 1341 (D.C. Cir. 1973).

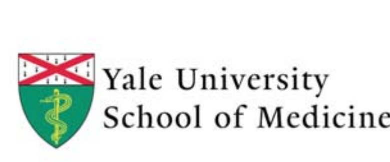
EEOC Complaint - *Considerations*



But….

- Plaintiff and most of the physicians are ***not*** employed by the Hospital – they are employed by the University
- EEOC has alleged in its complaint that all Physicians affected by the Policy ***are*** employees
- EEOC, at this stage at the pleadings, is not required to set forth the basis of it's claim that the independent physicians are employees
- Independent contractors cannot seek protection under the ADEA or ADA

EEOC Complaint - *Considerations*



Absent a direct employment relationship, a claimant must establish that, in this case, the Hospital has sufficient and direct control over the individual. Some factors include:

- When, where, and how the individual performs the job
- Does the job require a high level of skill or expertise?
- Does the Hospital furnish the the tools, materials and equipment for the individual to perform the job?
- Does the Hospital have a right to assign additional projects to the worker?
- Does the Hospital set the hours of work and duration of the job?
- Is the individual paid by the hour, week, or month rather than the agreed cost of performing a particular job?
- Does the individual hire and pay assistants?
- Can the Hospital discharge the individual?

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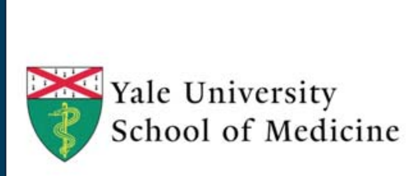
EEOC Complaint - *Considerations*



A Hospital which has an existing late career policy or which is considering such a policy should consult with legal counsel to determine whether there have been court decisions within its jurisdiction which have addressed these direct control factors to determine whether independent physicians will be treated as employees for purposes of Title VII, the ADEA or the ADA

Get Legal Advice

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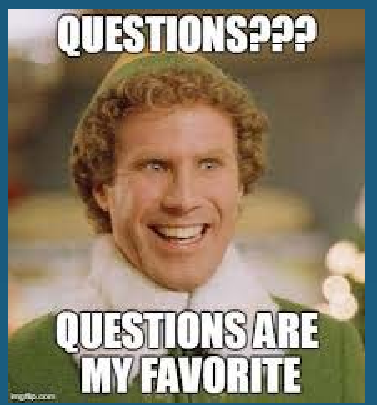
QUESTIONS???
QUESTIONS ARE MY FAVORITE

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Practitioner evaluation for cognitive function concerns

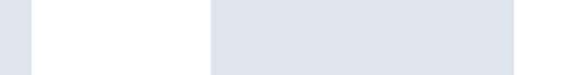
Are there options?

Identifying Cognitive Impairment

Who can, or will, help?

Family members, institutions, and colleagues may contribute to hiding problems with an impaired physician

- Power differential
- Fear of loss
  - Practice
  - License
  - Prestige
- Hesitancy to “betray” a colleague
- Social stigma of dementia / other illness



The Impaired Physician

Not my brother's keeper?

- **A 2005 STUDY** found physicians would be more likely to report a colleague impaired due to substance abuse rather than cognitive decline or psychological impairment

- **A 2010 STUDY** showed 20% of physicians had encountered an impaired colleague in their previous three years of practice but more than 30% had taken no action

Farber NJ, et al. Physicians' willingness to report impaired colleagues. Soc Sci Med. 2005 Oct;61(8):1772-5.
DesRoches CM, et al. Physicians' Perceptions, Preparedness for Reporting, and Experiences Related to Impaired and Incompetent Colleagues. JAMA. 2010;304(2):187–193.

Cui malo?

Cognitive Impairment Concerns

It's not just an age issue

522 lawsuits filed against retired orthopedic surgeon, Ascension St. Vincent's

I-TEAM: Appeals court rules more than 2,700 texts and images regarding doctor at the center of malpractice lawsuits be released in discovery

If the organization knew or ***should have known*** that a practitioner is not qualified (due to training, quality, *or* cognitive deficits) and the practitioner injures a patient through an act of negligence, the organization can be found separately liable for the ***negligent credentialing*** of this practitioner.

impaired judgment and mood," according to court documents.

to the state I think. He is out of his mind today. He's so confused... "not making any sense," and "can't form a full sentence."

License surrendered 2021

The suits claim the hospital allowed Dr. David Heekin to operate on patients for years even as he was allegedly suffering a progressive neurological condition that caused him to lose his balance and slur his speech. The suits allege he caused devastating injuries and even the death of one patient.

I-TEAM: Former Ascension CEO compelled to testify at deposition in negligence lawsuits

A former orthopedic surgeon at Ascension St. Vincent's accused of operating while impaired in hundreds of lawsuits

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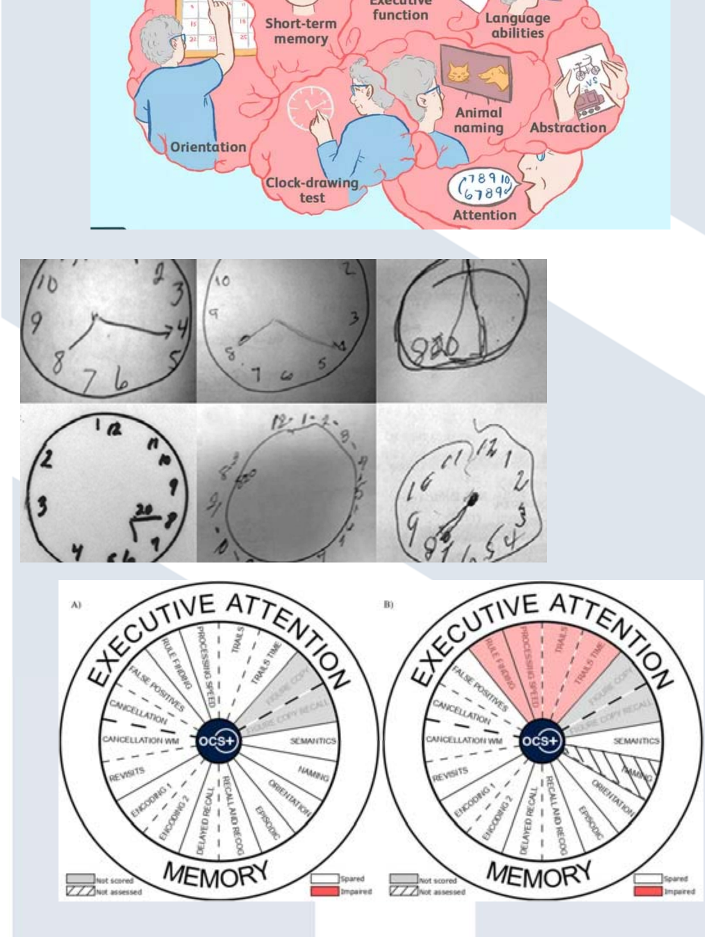
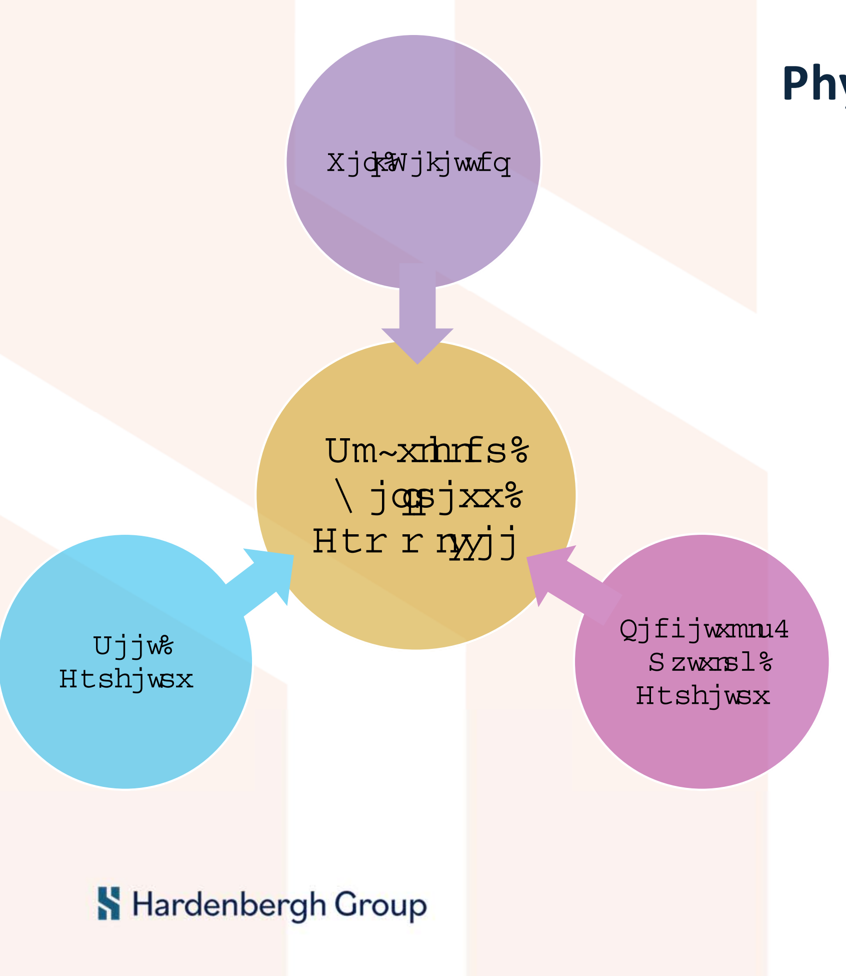
Cognitive Screening

The Challenges – Meaningful or Helpful?

- There is no single universally accepted screen that satisfies all requirements in the detection of cognitive impairment
- There are many screening tests, but few have been well validated
- Many have low accuracy for <u>mild</u> levels of impairment
- Many have demographic biases in score distribution
- Many over-emphasize memory dysfunction
- Cannot be used to create a differential diagnosis because they are designed to identify specific dementia subtypes



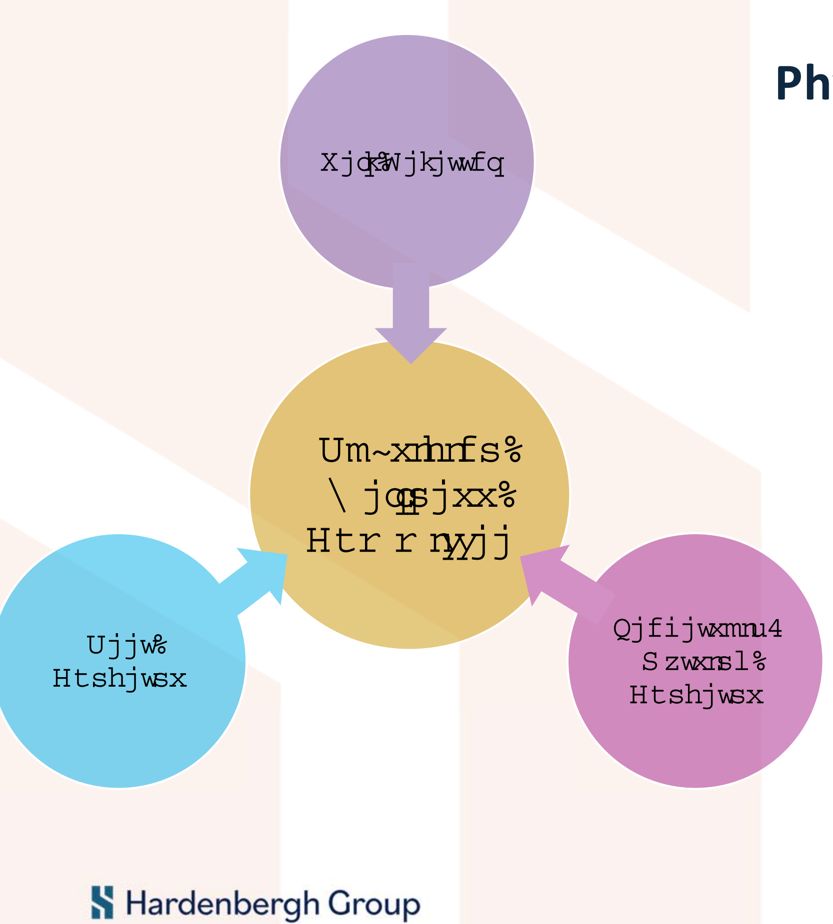
Existing & Alternative Age Neutral Policies



Physician Wellness Committees

- Physician Wellness committees are designed to accept the referrals from medical staff leadership or committees when there is a reasonable suspicion that a physician may suffer from some form of physical, psychiatric or other impairment which could result in adverse patient consequences
- This committee typically is multidisciplinary in nature, including a psychiatrist, which will then either conduct an initial evaluation which can take many forms or which may refer the physician to an outside agency for a more thorough evaluation including physicals, fitness for duty evaluation, or neuropsychological testing

Existing & Alternative Age Neutral Policies



Physician Wellness Committees

- Policies related to Physician Wellness Committees are all age neutral ***but*** rely on either self-reporting or the reporting of by peers and other individuals at the Hospital
  - Studies have demonstrated that there is significant under reporting even when suspected impairment, disruptive behavior and other forms of unacceptable conduct is observed.

Existing & Alternative Age Neutral Policies

MS.08.01.01 Focused Professional Practice Evaluation
The Organized Medical Staff defines the circumstances requiring focused monitoring and evaluation of a practitioner's professional performance

MS.08.01.03 Ongoing Professional Practice Evaluation
OPPE allows the organization to identify practice trends that impact quality of care

Alternative Approaches and Policies

- Incorporate all or some of the factors listed above ***(clues to potential cognitive deficits)*** into the routine appointment and reappointment application process in which these factors are investigated, identified and reflected in reports being sent to the Department Chair, the Credentials Committee, the MEC and eventually the Board of Directors

- Incorporate some or all of these factors into existing FPPE/OPPE policies which are then monitored on a continuous basis and reviewed, as appropriate, as part of collegial intervention and routine peer review processes

The Late Career Physician

PPE Data Ensures Context, Perspective, Fairness, & Patient Safety

MS.08.01.01 Focused Professional Practice Evaluation

The Organized Medical Staff defines the circumstances requiring focused monitoring and evaluation of a practitioner's professional performance

MS.08.01.03 Ongoing Professional Practice Evaluation

OPPE allows the organization to identify practice trends that impact quality of care

Patient Complaints or Staff Concerns?

Outlier on Core Measures?

Medication errors?

Peer References?

Are there other concerns?

Existing & Alternative Age Neutral Policies

Alternative Approaches and Policies, *continued*

- Strongly recommend that physicians who reach a particular age or a certain number of years in practice that they voluntarily agree to take a physical, ophthalmologic, neuropsych evaluation or other evaluative process as deemed acceptable by the medical staff and Hospital
  - This decision would be voluntary and refusal to do so should not result in any disciplinary action, reduction in staff category or other similar adverse outcome

Existing & Alternative Age Neutral Policies

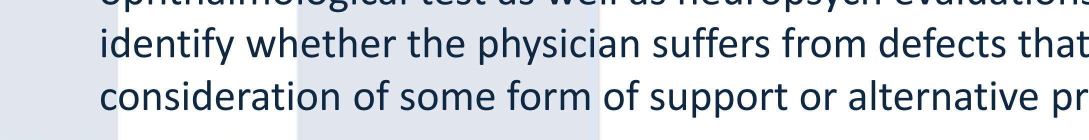
Alternative Approaches and Policies, *continued*

- In the event that deficits are identified, the physician will be required to disclose the report so that it can be further reviewed and appropriate next steps taken

- If the practitioner does not agree to be voluntarily assessed, to the extent that the Hospital has not already incorporated the factors above into an FPPE/OPPE Policy, the Hospital could then do a concurrent or retrospective review of the practitioner's cases and other practices to determine whether there are any red flag factors which could result in further reviews or a requirement to undergo identified evaluations

Non-Disciplinary Remedial Measures

- As should be true with existing policies, the identification and confirmation of any problems relating to impairment or any form of deficit should not, absent extreme danger to patients, result in the imposition of disciplinary action
- Hospitals and medical staffs should instead implement and apply its existing peer review policies and collegial intervention methods in order to identify the cause of any identified issues in order to allow the physician to address these issues and to attempt to identify other remedial steps short of disciplinary action
- Depending on the results of this review, it may be appropriate to then work with a Physician Wellness Committee which would serve as an advocate for the physician but also require a physical examination, ophthalmological test as well as neuropsych evaluations in order to identify whether the physician suffers from defects that require consideration of some form of support or alternative practice options



Non-Disciplinary Remedial Measures

These other remedial measures can include the following:

- Changing/limiting practice
- External support
- Retraining/reeducation
- Eliminate or reduce procedural work
- Allow more time in taking care of and treating patients
- Provide memory aides
- Provide or require mandatory consultations with other physicians for second opinions
- Reduced ED call responsibilities or removal from ED on call schedule
- Proctoring

May trigger reporting requirements

Self Referral
For
Cognitive
Evaluation

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Cognitive Impairment Concerns

What to do?

- *Self referral for evaluation requires self-awareness.* Even cognitively normal adults have been shown to be poor judges of their own cognitive performance
    - Maintenance of certification process

Relying upon complaints or "referral for cause" after concerns have already arisen may sacrifice opportunities to detect a physician's impaired performance at a stage when remediation might be more successful and future errors more effectively prevented.

    - Pennsylvania Medical Society's LifeGuard Assessment
    - Texas A&M University Rural and Community Health Institute KSTAR Program (Knowledge, Skills Training, Assessment, & Research)

https://www.fsmb.org/spex-plas/plas-information/
https://www.paceprogram.ucsd.edu/
https://www.cpepdoc.org/
https://architexas.org/programs/kstar-physician/index.html

Requested, Suggested, Mandated Referral

Cognitive Impairment Concerns

What to do?

Optimally, any screening evaluation would adequately challenge the subject's cognitive resources with an emphasis on

- Ability to problem solve
- Judgement
- Decision making
- Executive function

Proceed with caution – but where?

Physician Health Programs

How PHPs Function

- Nearly every state has developed a PHP which operates within the parameters of state regulation
- PHPs provide im ysicians (and in some states othe heir health and well-being.
- PHP's have exter -term monitoring of physicians wh s and substance use disorders.
- Excellent resource e present

MEDICAL SOCIETY OF THE STATE OF NEW YORK

ORGANIZED 1807

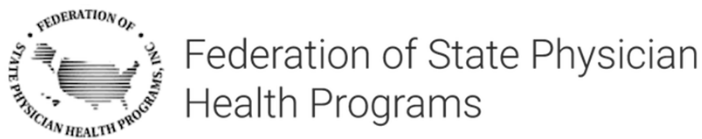
CPH - Committee for Physician Health

No PHP

Created with mapchart.net

Physician Health Programs

How PHPs Function



- A Physician Health Program (PHP) is a confidential resource for physicians, other licensed healthcare professionals, or those in training suffering from addictive, psychiatric, medical, behavioral or other potentially impairing conditions.
- PHPs coordinate effective detection, evaluation, treatment, and continuing care monitoring of physicians with these conditions.
- Coordination and documentation of a participant's progress allows PHPs to provide documentation **verifying a participant's compliance with evaluation, treatment and/or continuing care recommendations**.
    - Physician must sign a release allowing the facility to receive those reports

- Drug and Alcohol related issues
- Monitoring performed typically by the state PHP
- Time-limited
- Recidivism – *"relapse is part of recovery," but protecting the public is of paramount importance*

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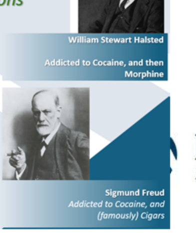

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Physician Health Programs

Safe Harbor Protections

- Physicians who self-report to their state PHP are deemed **in compliance** with their State Board self-reporting requirements
    - "Safe Harbor" protections allow confidential evaluation and treatment without State Board involvement
- PHPs are required to report to the Board:
    - Physicians who are an imminent threat to patient safety
    - Those who do not comply with PHP recommended treatment and monitoring
    - Those who do not cease practice when instructed to do so for their own or their patients' safety
- *A physician who has self-reported to their state PHP may choose to not notify your facility*

Physician Health Programs

Safe Harbor Protections

THE ASSURANCE OF CONFIDENTIALITY

The confidentiality of the CPH program participants, referral sources and CPH records are protected by New York State and Federal laws. Anyone who makes a referral or volunteers to work with CPH participants shall not be liable for actions taken in good faith and without malice.

CPH does not refer physicians to the New York State Department of Health's Office of Professional Medical Conduct as long as the physician agrees to participate, stays with the program, is helped by treatment, and does not present an imminent danger to the public.

Cognitive Impairment Concerns

What to do?

- Age-based mandatory evaluations are (for now) off the table
- Utilize the umbrella of your Peer Review processes
  - Provides protections (process, documentation, etc)
  - Behavioral evaluation and intervention processes may lead to identification of issues
  - This is a medical staff issue and responsibility; don't involve the physician's PCP
- Get to know your State Physician Health Program
  - Excellent resource for evaluation of physicians with cognitive concerns
  - A mandated referral is not reportable to the State Board or NPDB

A refusal to go, however….

Requested, Suggested, Mandated Referral

CPH - Committee for Physician Health

New York Peer Review Protections

Altered by Appellate Court

- ***Verbal or writ*** malpractice la[...]ment was reviewed [...] **discoverable** ([...]uit is filed after a pe[...]*ntly complicating c*[...]

- In a recent de[...]*Op 07264* the cou[...] hospital's peer[...] the "committee," [...] **entitled to the**[...] as it could not be determined whether those statements were made by a non-party *(to a malpractice lawsuit).*

Cognitive Impairment Concerns

What to do?

Requested,
Suggested,
Mandated
Referral

Voluntary suspension of privileges

Valuable tool

~

Allows time for investigation *(and reflection)*

~

Preserves patient safety and personal dignity

If not now, when?
If not us, whom?

- **Without more robust initiatives led by the medical profession regarding the late-career physician, then regulators, legislators, or other non-clinicians may impose more draconian measures and controls**
- **By leading with our own initiatives, the medical profession can demonstrate to the public that it is indeed worthy of the trust that underlies the practice of medicine**

BUT PROCEED

PATIENT

WI

INSIGHT

CAUTION

SENSITIVITY

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Thank you!

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