



# FMA State Regulatory Update

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## Mental Health Questions

At the 2017 FMA Annual Meeting, the House of Delegates passed Resolution 17-106, which directed the FMA to seek an administrative change to the questions on the Florida physician licensure application regarding prior mental illness and mental health treatment in order to ask instead whether there are any physical or mental conditions that would currently interfere with the safe practice of medicine. Several national organizations such as the American Medical Association (AMA), Federation of State Medical Boards (FSMB), and the American Psychiatric Association (APA) also have encouraged state medical boards to re-examine their questioning in favor of less intrusive and more relevant questions.

**The standing physician licensure application** contains six questions asking whether the applicant has been diagnosed with or impaired by a mental health or substance-related disorder during the previous five years. These types of questions are particularly problematic in the medical community because

it deters potential applicants, particularly medical students, residents, and fellows, from seeking proper medical treatment in order to avoid the perceived heightened stigma surrounding physicians and mental health.

In September 2017, the FMA petitioned the Board of Medicine to initiate rulemaking to amend the physician application for licensure in accordance with Resolution 17-106 and further requested that a joint allopathic and osteopathic workgroup be created in order to further discuss, research and draft new questions. This request was granted.

The Mental Health Workgroup met throughout 2018 and developed a new set of questions that would have been consistent with the FMA Resolution and guidance from the AMA, FSMB, and APA. Unfortunately, despite strong support from the FMA, Council of Florida Medical School Deans (CFMSD), and the Florida Psychiatric Society (FPS), this language was not accepted by the full Board and the process essentially started all over again.

*Although this language does not go as far as originally requested, cutting the number of questions from six to two and limiting the mental health lookback to two years is certainly an improvement.*

The FMA, CFMSD, FPS and concerned Board members spent 2019 working out various compromises, attempting to strike a balance between advocating for physicians and protecting the public. Despite a considerable amount of work, the matter was tabled for the majority of 2020 as the Chair of the Board of Medicine was disinterested in the topic.

Compromise language finally was set to be heard before the full Board on Aug. 7, 2020 until the Florida Department of Health intervened with the demand that the mental health questions conform across all the licensee applications that it regulates – despite there being obvious differences in training to become a medical doctor and training to become an acupuncturist. The Department pushed its previously unseen language through during a Joint Board of Medicine and Board of Osteopathic Medicine meeting on Oct. 1.

Cut from six to two, the application questions will now ask:

- (1) During the last two years, have you been treated for or had a recurrence of a diagnosed physical or mental disorder that impaired or impairs your ability to practice?
- (2) During the last five years, have you been treated for or had a recurrence of a diagnosed substance-related (alcohol or drug) disorder that impaired or impairs your ability to practice?

Although this language does not go as far as originally requested, cutting the number of questions from six to two and limiting the mental health lookback to two years is certainly an improvement. It is important for an applicant to note that disclosure is only necessary if the mental, physical, or substance abuse disorder impaired or impairs one's ability

to practice medicine. The new set of questions also will limit the amount of documentation that must be provided by an applicant as a result of answering in the affirmative.

The application also clarifies what types of issues do not trigger an affirmative response:

Seeking assistance with stress, mild anxiety, situational depression, family or marital issues will not adversely affect the outcome of a Florida health care practitioner application. The board and the department do not request that applicants disclose such assistance.

**Read the new language in full here.** While the new questions are certainly an improvement, the Department's desire to have uniform questions dominated the CFMSD's effort to create a safe haven for students, residents, and fellows. The FMA applauds Florida's medical schools for their commitment to the well-being of their learners and the development of phenomenal counseling programs. We will continue moving forward to educate and destigmatize mental health issues among the medical community.

*\*Note: These questions pertain to the initial licensure application, not renewal applications.*

### **Electrologist Supervision**

The Board held a rule hearing on Oct. 2 for a proposed rule amendment to Rule 64B8-56.002, F.A.C, from the Electrolysis Council. The Electrolysis Council is an advisory council under the supervision of the Board of Medicine, and it is ultimately up to the Board whether to adopt recommendations from the Council.

Section 458.348(2), F.S., specifically states that all protocols relating to electrolysis or electrology using laser or light-based hair removal by persons other than physicians shall require the direct supervision and responsibility of a physician. Despite the clear requirement for direct supervision as mandated by law, the Council proposed a rule change that would allow direct supervision via telehealth. The FMA testified at the rule hearing opposing this change as a matter of law.

There are several instances in both statute and rule where the meaning of direct supervision requires an on-site presence, whereas indirect supervision is routinely defined as allowing the supervisor to be available via telecommunications. There have been numerous failed attempts by electrologist interest groups to pass legislation that would change the level of supervision from direct to indirect. By not responding to these attempts, the Legislature has made it clear that the legislative intent is to require on-site, readily available direct supervision.

Finally, the passage of the expansive telehealth legislation in 2019 did not change direct supervisory responsibilities. While the telehealth statute allows licensed electrologists to utilize telehealth, it also states that telehealth providers must practice in a manner consistent with their scope of practice, which, for electrologists, would entail practicing under the direct supervision of a physician. In fact, as written, the proposed rule would allow an out-of-state physician to supervise an electrologist located in Florida.

If passed, this change would constitute an invalid exercise of delegated legislative authority, pose a risk to patient safety, and have widespread implications for other licensees who require direct supervision. Ultimately, the Board rejected the

Council's proposed changes. However, the vote was far from unanimous. The FMA will continue monitoring the Council's activity and intervene in any attempt to further skirt statutory requirements.

### **FMA's Request for Renewal Fee Waiver**

When COVID-19 was declared a global pandemic, it was clear that physicians would be the leaders at the front line. What was less clear at that time, however, was the negative financial impact that transcended every specialty and practice model.

While physicians have spearheaded the fight against this virus, it has not come without cost. Patient volumes have fallen drastically for several reasons, including executive mandates, safety purposes, and patient reluctance. In response to a recent Medscape survey, 62 percent of U.S. doctors said their income had decreased during COVID-19, with a quarter of those respondents seeing an income decrease of 50 percent or more.

Always looking for opportunities to alleviate physicians' administrative burdens, **the FMA petitioned the Board of Medicine** to waive or drastically reduce license renewal fees for 2021 and 2022. Physicians pay the highest renewal fee and the Board regularly carries over several million dollars in surplus. The FMA worked with the Board's Finance and Process Committee to ensure that the reduction would not put the Board in a deficit at any time.

Despite the extreme personal, professional, and financial stress faced by Florida's physicians, the Department and Chair were unmoved and refused to lower the renewal fee in any amount. While disappointing to say the least, this will not deter the FMA from exploring every avenue to advocate for our members.

