

May 23, 2022

Natalie Norberg
Executive Administrator
Alaska State Medical Board
P.O. Box 110806
Juneau, AK 99811-0806

Dear Ms. Norberg:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I am writing to encourage the Alaska State Medical Board (ASMB) to continue its work to support the public health and safety of Alaska's patients, as well as the professional health and competence of Alaska's physicians. The AMA specifically urges the ASMB to give additional attention to questions within its physician licensing application that may unintentionally stigmatize mental illness or other chronic health conditions. As you well know, stigmatization can lead to physicians not seeking timely care and imperil patients' and physicians' health. It is to this end that the AMA makes the following recommendations:

1. The AMA recommends that questions (15), (19), and (21) on the current physician licensure application be removed and replaced. We similarly recommend that questions (8) and (9) on the current renewal application be removed and replaced. These questions do not distinguish between past diagnosis and current impairment. A focus on past diagnosis creates a culture of stigma and fear and it is our position that it is more appropriate to focus on whether there is a current impairment, which in turn helps support physician health and wellness. Therefore, the Federation of State Medical Boards (FSMB), many state medical boards, and the AMA recommend the following question to be used instead of the above noted questions:

*Are you currently suffering from any condition for which you are not being appropriately treated that impairs your judgment or that would otherwise adversely affect your ability to practice medicine in a competent, ethical, and professional manner?
(Yes/No)*

2. Alternatively, should ASMB oppose the new language above, the AMA suggests that ASMB look to current question (16) on its renewal application for a question that is more limited than the above, but appropriately focuses on current impairment rather than past diagnosis:

(16) Do you currently have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?

The following considerations provide additional detail and support for the AMA's recommendations.

I. There is an urgent need to remove or revise questions about mental health-related illness, diagnosis, treatment, etc., on physician license and renewal applications.

Even before the COVID-19 pandemic, physician burnout was a major challenge for the U.S. health care system, impacting nearly every aspect of clinical care, and there was wide-spread acknowledgment that something had to be done. One study showed a national burnout rate of 43.9 percent among physicians in practice,¹ including private practice, academic medical centers, and the U.S. Department of Veterans Affairs. In 2018, the FSMB noted that, “[O]ne is hard-pressed to find a phenomenon that negatively affects a broader array of stakeholders in health care than burnout”² and that, “physicians are experiencing burnout at alarming rates.”³

In 2018, to address the burnout from a medical licensure perspective, the FSMB adopted an extensive policy document entitled, “Physician Wellness and Burnout, Report and Recommendations of the Workgroup on Physician Wellness and Burnout” (2018 Policy). The 2018 Policy outlined the causes of physician burnout, described the negative effect that burnout has on patient care and safety, and urged medical boards to facilitate physicians’ ability to access support for mental health-related conditions by either eliminating mental health-related questions altogether or at least having those questions ask only about current impairments.

The situation, unfortunately, has deteriorated since 2018. In many parts of the country, the multiple phases of the COVID-19 pandemic have pushed physician stress to crisis levels, as physicians have been desperately needed to care for patients on the frontlines. Many physicians have been subject to extremely stressful conditions during the pandemic—conditions that have made them particularly vulnerable to negative mental and physical health effects. Stressors already present in their lives have been exacerbated, making the need for confidential counseling, wellness services, or other care more important than ever. In fact, according to a 2022 Medscape report containing the results of a survey of more than 13,000 physicians in 29 specialties, 47 percent of physicians reported having burnout, up from 42 percent last year.⁴ Moreover, 51 percent of women physicians said they were burned out,⁵ and 21 percent of physicians reported being depressed, with a quarter of those physicians reporting as clinically depressed.⁶ Notably, data from the National Academy of Medicine (NAM, formerly the Institute of Medicine) is consistent with the Medscape data. Specifically, NAM found that, “35-54% of nurses and physicians as well as 45-60% of medical students and residents (“learners”) experience substantial symptoms of burnout.”⁷

Utterly distressing is the unabated problem of physician suicide and suicidal ideation. Suicide-related concerns were a major problem in the physician community well before the pandemic. For example, the 2018 Policy noted that, “an alarming and extreme result of physician burnout has been the disproportionate (relative to the general population) levels of suicide in recent years by physicians,

¹ Shanafelt TD, West CP, Sinsky C, et al. Changes in burnout and satisfaction with work-life integration in physicians and the general US working population between 2011 and 2017. *Mayo Clin Proc.* 2019;94(9):1681–1694. doi: 10.1016/j.mayocp.2018

² Physician Wellness and Burnout, Report and Recommendations of the Workgroup on Physician Wellness and Burnout, Adopted as policy by the Federation of State Medical Boards, April 2018, page 4.

³ Id. at page 8.

⁴ Physician Burnout & Depression Report 2022: Stress, Anxiety, and Anger. Medscape. Accessible at <https://www.medscape.com/slideshow/2022-lifestyle-burnout-6014664#2>.

⁵ Id.

⁶ Id.

⁷ National Academy of Medicine, Action Collaborative on Clinician Well-Being and Resilience. Clinician well-being is essential for safe, high-quality patient care. Accessible at <https://nam.edu/initiatives/clinician-resilience-and-well-being/>.

medical residents, and even medical students.”⁸ This crisis persists. According to a 2022 Medscape report, physicians have suicidal thoughts at about twice the rate of the general population.⁹ It is, therefore, imperative that all unnecessary barriers that stand in the way of physicians getting help for mental health issues be eliminated as quickly as possible.

II. Questions seeking mental health-related information are problematic.

Questions about mental illness, diagnoses, treatment, evaluation, or substance use on physician licensure and renewal applications likely present the greatest impediment to physicians seeking help for burnout and other mental health-related conditions. As the 2018 Policy states:

Many physicians are reluctant to seek help for burnout or any of its many underlying causes...because they assume that seeking such care may have a detrimental effect on their ability to renew or retain their state medical license, arguably the most important credential a physician receives during their professional career.¹⁰

The consequences of reporting to a licensing board on stable and treatable conditions such as anxiety or depression can range from a physician simply being required to submit a letter from their primary care provider that documents fitness to practice; to appearing before state board examiners; to undergoing (and paying for) an examination by a board-appointed physician; to having to provide extensive or ongoing medical records; to undergoing inappropriate treatment and monitoring; to paying for inpatient or intensive outpatient treatment that is possibly followed by long-term monitoring; and to agreeing to practice restrictions, exclusion from employment opportunities, insurance coverage, or professional advancement.^{11,12} As the 2018 Policy notes, “The very presence of application questions for medical licensure or licensure renewal may stigmatize those suffering from mental and behavioral illnesses for which physicians might otherwise seek care.”¹³

⁸ Id. at page 4, citing Rubin R. (2014). Recent Suicides Highlight Need to Address Depression in Medical Students and Residents. *JAMA*, 312(17):1725-1727; Gold KJ, Sen A, Schwenk TL. (2013). Details on suicide among US physicians: data from the National Violent Death Reporting System. *Gen Hosp Psych*, 35:45-49.

⁹ Depression, Suicidal Ideation Continue to Plague Physicians: Survey, Medscape. March 2022, accessible at [https://www.medscape.com/viewarticle/969656#:~:text=Overall%2C%2021%25%20of%20physicians%20reported,experiencing%20severe%20depression%20rose%204%25](https://www.medscape.com/viewarticle/969656#:~:text=Overall%2C%2021%25%20of%20physicians%20reported,experiencing%20severe%20depression%20rose%204%25;); A Tragedy of the Profession: Medscape Physician Suicide Report 2022, accessible at <https://www.medscape.com/slideshow/2022-physician-suicide-report-6014970>.

¹⁰ Physician Wellness and Burnout, Report and Recommendations of the Workgroup on Physician Wellness and Burnout, adopted as policy by the Federation of State Medical Boards, April 2018, page 9, citing Chew-Graham CA, et al. (2003). ‘I wouldn’t want it on my CV or their records’: medical students’ experiences of help-seeking for mental health problems. *Medical Education*, 37(10):873–880; Federation of State Medical Boards. (2011). Policy on Physician Impairment; Guille C, et al. (2010). Utilization and Barriers to Mental Health Services Among Depressed Medical Interns: A Prospective Multisite Study, *Journal of Graduate Medical Education*, 2(2):210-214; Gold K, et al. (2016). “I would never want to have a mental health diagnosis on my record”: A survey of female physicians on mental health diagnosis, treatment, and reporting. *General Hospital Psychiatry*, 43:51–57; Dyrbye LN, et al. (2017). Medical Licensure Questions and Physician Reluctance to Seek Care for Mental Health Conditions. *Mayo Clin Proc*, 92(10):1486-1493.

¹¹ Gold KJ, Andrew LB, Goldman EB, Schwenk TL. “I would never want to have a mental health diagnosis on my record”: A survey of female physicians on mental health diagnosis, treatment, and reporting. *Gen Hosp Psychiatry*. 2016; 43:51-57.

¹² Mental illness as a cause of disability among physicians and medical students: An interview with Louise Andres. *AMA Journal of Ethics*. Oct 2016;18(10):1-3.

¹³ Physician Wellness and Burnout, Report and Recommendations of the Workgroup on Physician Wellness and Burnout, Adopted as policy by the Federation of State Medical Boards, April 2018, page 10.

A. Information about a physician’s history of mental illness is an unreliable predictor and can lead to misreporting.

Not only do questions about past mental health discourage physicians from seeking help for burnout or other mental health-related conditions, but they also are of questionable value and may result in the collection of inaccurate information. According to the 2018 Policy, “a history of mental illness or substance use does not reliably predict future risk to the public.”¹⁴ Worst still, such questions, “may cause some physicians to misrepresent personal information that is requested or not respond accurately at all to licensing application questions.”¹⁵

B. Inquiries about past mental health may violate the Americans with Disabilities Act.

Aside from being a major and unnecessary impediment to physicians seeking assistance with mental health issues, questions about mental health history may violate the Americans with Disabilities Act (ADA). The FSMB, courts, and commentators have voiced concerns that questions by medical and other licensing boards about the history of diagnosis or treatment, rather than about current impairment, may run afoul of the ADA.¹⁶ While state boards are charged with performing a thorough assessment of licensure and renewal candidates, that assessment must be balanced by applicants’ rights under the ADA.¹⁷ Accordingly, the 2018 Policy states that, “Application questions must focus only on current impairment and not on illness, diagnosis, or previous treatment in order to be compliant with the Americans with Disabilities Act”¹⁸ since the “ADA requires licensure application questions to focus on the presence or absence of current impairments...”¹⁹

C. Medical boards have an opportunity to further patient health and safety, promote patient access, and address physician’s workforce concerns by focusing only on current impairment.

Encouraging physicians to get help by focusing only on current impairments will increase patient health and safety, promote access to care, and address physician workforce issues. As the 2018 Policy pointed out, “improved population health cannot be achieved without ensuring the health and well-being of health care providers.”²⁰ It also considered that physician burnout is “ultimately a patient safety issue,”²¹ and that, “State medical boards’ duty to protect the public...also includes a responsibility to ensure the wellness of its licensees.”²² Lessening burnout by encouraging physicians to ask for assistance, i.e., by asking only about current impairments, would also improve the quality of patient care.

¹⁴ Id at 10-11 citing Federation of State Medical Boards. (2006). Federation of State Medical Boards: Americans with Disabilities Act of 1990. License Application Questions: A Handbook for Medical Boards.

¹⁵ Id at page 11 citing Gold K, et al. (2016). “I would never want to have a mental health diagnosis on my record”: A survey of female physicians on mental health diagnosis, treatment, and reporting. *General Hospital Psychiatry*, 43:51–57.

¹⁶ Id at 11 citing Polfliet SJ. (2008). A National Analysis of Medical Licensure Applications. *J Am Acad Psychiatry Law*, 36(3):373.

¹⁷ Id.

¹⁸ Id. at page 12.

¹⁹ Id. at page 13.

²⁰ Id at page 3.

²¹ Id at page 1.

²² Id. at page 4.

Importantly, NAM has identified multiple ways in which burnout lowers patient care quality including:

1. Resulting staffing challenges decrease patients' access to care;
2. High workloads, administrative burdens, and poorly designed technologies divert clinicians' time away from patient care;
3. Workplace ethical dilemmas can erode clinician professionalism;
4. Barriers to patient-clinician communication adversely affect patient satisfaction and health outcomes; and
5. Safety incidents, medical errors, and malpractice claims are more likely.²³

It makes sense, therefore, that eliminating or revising mental health-related questions on licensure and renewal applications would free up more physicians to seek help, and this, in turn, would result in burnout likely being reduced and the effects listed in (1) through (5) above being ameliorated.

Finally, eliminating or revising questions that discourage physicians from seeking help with burnout and other mental health-related issues may likely address workforce issues. According to NAM, physicians with burnout are at least twice as likely to leave their jobs and five times more likely to leave medicine altogether.²⁴ Further, it is not the physicians at the later stages of their career that are most susceptible to burnout; rather, "research has demonstrated that physicians in the middle of their careers are at the highest risk for burnout."²⁵ As the 2018 Policy notes, "At a time when there is compelling evidence of a shortage of qualified practicing physicians in many parts of the United States, losing additional physicians to early or unnecessary retirement would have a detrimental impact on patient access to care across the country."²⁶

D. FSMB recommendations are a best practice and should be followed to reduce stigma and to encourage treatment-seeking among physicians.

Because of the concerns described above, the 2018 Policy recommended, in part, that medical boards review their licensure and renewal applications to determine whether it was necessary to ask probing questions about a physician applicant's mental health, addiction, or substance use. Moreover, the 2018 Policy queried whether the information these questions were designed to elicit could be obtained through means that were less likely to discourage treatment-seeking among physician applicants.²⁷ Rather than asking about mental health, the FSMB stated that seeking information about a physician's conduct could serve as a proxy for ascertaining if a physician was impaired.²⁸ For example, the FSMB noted that some boards subscribed to data services that notified them when physicians were arrested or convicted, including driving under the influence, and pointed out that the FSMB recommended that boards require applicants to satisfactorily pass a criminal background check as a condition of licensure.²⁹

If boards nonetheless felt strongly about asking about the mental health, the FSMB stated that medical boards *must focus only* on current impairment and not on illness, diagnosis, or previous treatment in order to be compliant with the ADA.³⁰ The 2018 Policy went further to state that, "Applications must not seek information about impairment that may have occurred in the distant past and state medical boards should

²³ National Academy of Medicine, Action Collaborative on Clinician Well-Being and Resilience. Clinician well-being is essential for safe, high-quality patient care. Accessible at <https://nam.edu/initiatives/clinician-resilience-and-well-being/>.

²⁴ Id.

²⁵ Physician Wellness and Burnout, Report and Recommendations of the Workgroup on Physician Wellness and Burnout, Adopted as policy by the Federation of State Medical Boards, April 2018, page 5.

²⁶ Id.

²⁷ Id. at page 12.

²⁸ Id. at page 12.

²⁹ Id. at page 12 citing Federation of State Medical Boards. (2015). *Essentials of a State Medical and Osteopathic Practice Act*.

³⁰ Id. at page 12.

limit the time window for such historical questions to two years or less, though a focus on the presence or absence of current impairment is **preferred**.³¹ Consequently, the FSMB stated that if a medical board still wanted to include questions about a physician's mental health on licensure or renewal applications, the medical board should do so using the following language:

Are you currently suffering from any condition for which you are not being appropriately treated that impairs your judgment or that would otherwise adversely affect your ability to practice medicine in a competent, ethical and professional manner? (Yes/No)^{32,33}

It is important to note that, while the 2018 Policy states that questions about past impairments could be asked (provided they did not extend beyond a two-year period), it is preferred to focus on current impairments. Given the unprecedented stress that the COVID-19 pandemic has wrought on physicians and health care providers after 2018, the continuing increase in physician burnout and depression, and the ongoing crisis of physician suicide, it is the AMA's strong position that focusing solely on current impairments ought to no longer be thought of as preferred, but instead, imperative. We believe that every effort must be taken to reduce any unnecessary barriers that discourage physicians and health providers to seek the mental health support they need. We are pleased to report that medical boards in several states, e.g., Ohio and Minnesota, have recently changed their licensure applications to ask only about current impairments. While there is more work to be done, these states are forging a path for others to follow. We urge Alaska to join them in leading the way for the country's state medical boards.

III. A comparison of FSMB recommendations with specific questions asked on ASMB licensure and renewal applications highlights that fact that slight revisions would go far in reducing stigma and encouraging treatment-seeking by physicians.

Based on the above, it is the AMA's position that several questions on the ASMB's license and renewal applications appear to fall outside of the FSMB's preferred recommendations.

A. Specific licensure questions.

The current ASMB physician licensure application appears to contain the following questions:

(15) In the past two years, have you been diagnosed as having, or been hospitalized for, a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?

³¹ Id. at page 13.

³² Id. at page 13, citing American Psychiatric Association. (2015). Position Statement on Inquiries about Diagnosis and Treatment of Mental Disorders in Connection with Professional Credentialing and Licensing. *However*, it should be noted that on July 2018, the Board of Trustees of the American Psychiatric Association adopted a Position Statement on Inquiries about Diagnosis and Treatment of Mental Disorders in Connection with Professional Credentialing and Licensing (2018 Position Statement). See Bonnie R, Appelbaum P, M.D., Recupero P, M.D., J.D. Position Statement on Inquiries about Diagnosis and Treatment of Mental Disorders in Connection with Professional Credentialing and Licensing. Council on Psychiatry and the Law. American Psychiatric Association. July 2018. Under the 2018 Position Statement, the American Psychiatric Association suggests the following question: *Question: "Are you currently suffering from a condition that impairs your judgment or that would otherwise adversely affect your ability to practice [law / medicine / other profession] in a competent, ethical, and professional manner? (Yes/No)."*

³³ American Medical Association policy is consistent with the FSMB's recommendation, stating in part that "Our AMA will encourage those state medical boards that wish to retain questions about the health of applicants on medical licensing applications to use the language recommended by the Federation of State Medical Boards that reads, "Are you currently suffering from any condition for which you are not being appropriately treated that impairs your judgment or that would otherwise adversely affect your ability to practice medicine in a competent, ethical and professional manner? (Yes/No)." H-275.970 Licensure Confidentiality.

(19) In the past two years, have you used or are you currently using any chemical substance(s), legal or illegal, that in any way impaired or limited, or is currently impairing or limiting, your ability to practice medicine in a safe and competent manner?

(21) Have you had, or do you now have any disease or condition that interferes with your ability to perform the essential functions of your profession, including any disease or condition generally regarded as chronic by the medical community, i.e., (1) mental or emotional disease or condition; (2) alcohol or other substance abuse; (3) physical disease or condition, that presently interferes with your ability to practice your profession?

The above questions ask the physician applicant to disclose past diagnoses, hospitalizations, medical conditions, chemical substance use, diseases, or conditions rather than focusing solely on current impairment. At the same time, however, the licensure application does contain the following question:

(16) Do you currently have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?

Notably, question (16) complies with the FSMB's recommendations. If the ASMB still wants to ask about mental health-related issues, we would recommend that the ASMB retain question (16), which obviates the need to ask questions (15), (19), and (21) and is consistent with FSMB recommendations. If the ASMB chooses to retain questions (15), (19), and (21), the AMA strongly encourages the ASMB to revise these inquiries so that they only ask about current impairments.

B. Renewal application questions.

The current renewal application appears to include the following questions that are not focused solely on current impairment:

(8) Have you experienced, been diagnosed with, been evaluated for, or treated for any alcohol or other chemical abuse, dependency, or impairment?

(9) Have you experienced, been diagnosed with, been evaluated for, or treated for any physical or mental condition which may impair or interfere with your ability to safely practice medicine?

Questions (8) and (9) are not consistent with FSMB recommendations, again, because they are not confined to current impairments. If the ASMB wants to retain renewal application questions concerning mental health, then the AMA strongly encourages the ASMB to consider replacing questions (8) and (9) with question (16) above in III.A., which follows FSMB recommendations.

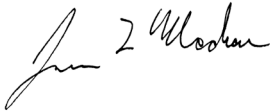
In conclusion, the AMA appreciates the invaluable and challenging role that the ASMB and other state medical boards play in protecting the public. Part of this role, we would all agree, includes fostering the well-being of its licensees. Today presents an opportunity for ASMB (with an evidence-based rationale) for advancing the well-being of licensee physicians by removing or revising questions on your license and renewal applications having to do with a history of mental illness. **The AMA strongly encourages the ASMB to show leadership in the states and take advantage of the opportunity presenting itself and align its applications with FSMB best-practices as outlined above.**

Natalie Norberg
May 23, 2022
Page 8

The AMA looks forward to continuing our dialogue and as such, welcomes further discussions. In that vein, please contact Daniel Blaney-Koen, JD, Senior Legislative Attorney, Advocacy Resource Center, at daniel.blaney-koen@ama-assn.org or (312) 464-4954, or Wes Cleveland, JD, Senior Attorney, Advocacy Resource Center, at wes.cleveland@ama-assn.org or (312) 464-4503, to discuss next steps.

Thank you for your consideration. We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Madara". The signature is written in a cursive style with a large initial "J" and "M".

James L. Madara, MD

cc: Alaska State Medical Association