
MEMORANDUM

TO: Administrative Affairs Committee
SUBJECT: Personal History Questions Review
DATE: March 5, 2021

In 2018, the Federation of State Medical Boards (FSMB) issued guidance encouraging state boards to evaluate the information applicants are required to disclose related to physical, mental, or behavioral conditions and decide if it is necessary to include probing questions related to these matters.¹ Further, if it is determined that the questions are necessary, the FSMB recommends that boards focus on current impairments and not the illness broadly.² It has been suggested that changes to these questions may encourage providers to seek appropriate care, destigmatize mental health, and ultimately address the growing concern of mental and behavioral health conditions within the medical community.

The Oregon Medical Board (OMB) currently requires applicants for initial licensure to disclose personal health information in Category 1 and Category 2 personal health questions (PHQ). Category 1 question focus on history questions such as exam failures, lapses in practice, and criminal history as well as any disciplinary actions taken by employers or state licensing agencies. Category 2 questions ask specifically about physical, mental, or behavioral health conditions that currently or within the last two years have impaired the applicant's ability to practice safely.

To assess the necessity of these questions and the potential consequences of changing them, a retrospective review of all initial applicants who answered affirmatively to these “Category 2” questions over the last five years was completed. This review examined the reasons why applications were scrutinized. If the scrutiny was associated with Category 2 disclosures, the applications were reviewed to determine whether that information would have been ascertained elsewhere in the application if the Category 2 questions were modified or removed.

Between 2016-2020, approximately 2% of applicants answered affirmatively to one or more Category 2 personal history questions. More specifically, in the past five years, the OMB approved a total of 8,444 new licensees; 165 applicants answered “yes” to at least one Category 2 question. Of note, the number of applicants responding affirmatively decreased significantly since July 2018, when the OMB revised its Category 2 PHQs from “within the last five years” to its current “within the last two years” time frame:

| Year | Time Period Lookback in Category 2 PHQs | # Applicants responding affirmatively to at least one Category 2 PHQ |
|------|---|--|
| 2016 | 5 years | 46 |
| 2017 | 5 years | 43 |
| 2018 | 5 years, 2 years | 27 prior to revision, 6 after revision |
| 2019 | 2 years | 26 |
| 2020 | 2 years | 17 |

When an applicant answers affirmatively to a PHQ, except for Category I question 1 standing alone, the application undergoes some level of administrative review. The level of administrative

¹ Federation of State Medical Boards, Physician Wellness and Burnout, (2018).

² *Id.*

review is determined by the content of the information. The administrative review begins with the application processor, who decides whether the information in the application requires referral to a higher-level reviewer. Those higher-level reviewers include the Licensing Specialist, Licensing Manager, Executive Director/Medical Director, the Administrative Affairs Committee (AAC), and the full Board. The vast majority of reviews here occurred at levels above the processor but below the Administrative Affairs Committee.

Of the 165 applications answering “yes” to at least one Category 2 question undergoing some degree of administrative review:

- 149 were granted licensure.
- 16 did not receive approval for licensure:
 - One was determined to be ineligible for licensure.
 - Six were discontinued³.
 - Three withdrew prior to AAC review.
 - Six withdrew at the recommendation of AAC.
- The OMB issued no denials with respect to this applicant pool.

Of note, one applicant that withdrew prior to AAC disclosed information that could only be obtained through Category 2 disclosure. This applicant was reviewed for other reasons as well, but the focus of the review was on information obtained as a result of the Category 2 disclosure.

In the five years reviewed, only 15 of the 165 applications were referred to AAC.

- Nine reviewed by AAC were approved for licensure, with six of them required to enter a monitoring program as a condition for licensure.
- Six withdrew at the recommendation of AAC and did not receive approval for licensure.

Only one applicant reviewed by the AAC disclosed information in Category 2 questions that could not be ascertained elsewhere in the application material. Notably, the information the applicant disclosed, alcohol use disorder and voluntary monitoring, would likely have been discovered irrespective of Category 2 disclosure. Although the Category 2 PHQ disclosures were the main focus on administrative review, the applicant also disclosed a recent DUII in Category 1 PHQ. In keeping with OMB practices, the applicant would have been questioned regarding the DUII disclosure. The OMB would likely have discovered the alcohol use disorder and voluntary monitoring through those means. Ultimately, this applicant was approved for licensure and required to enter monitoring with HPSP.

Of the 149 applications that were granted licensure:

- 102 were granted licensure with no restriction.
- 29 were required to enter or maintain HPSP monitoring.
- 12 were placed on an internal non-restrictive watchlist⁴, but no restriction on licensure.
- 4 had to pay a civil penalty for failing to disclose information.

³ “Discontinued” means the applicant voluntarily stopped the review process prior the Committee Review process. Discontinued applicants do not have to wait to reapply and there are no reports to FSMB.

⁴ Internal communication mechanism for licensing and investigative committees to identify potentially problematic material for future licensing decisions for the same applicant.

- 1 was required to sign a consent agreement for re-entry to practice requiring a mentor, but was not related to Category 2 PHQ responses.
- 1 was required to change from full license application to a limited license application.⁵

Of the applicants listed above, 55 disclosed information that could only be obtained through Category 2 disclosure. 12 of the 55 disclosed information that is not considered an impairment, such as child birth or miscarriage, and 8 of the 55 were required to enter monitoring with HPSP. Important to note, the 8 applicants required to enter monitoring may have been overlooked if questions were removed. However, if questions only inquired into current impairment as OMB administrative reviews do, it is likely that these applicants would have still been discovered.

For the 165 applications in this retrospective review, the most common reason for administrative review is information disclosed on Category 1 question seven which asks if applicants “have ever been arrested, convicted, or plead guilty to any offense....” 70 of the 165 applicants answered affirmatively to this question. Further, of these applicants, 44 of the 70 (63%) applicants were reviewed in part or in whole for reasons associated with this Category 1 disclosure.

When accounting for all reviewed applications, 85 of the 165 (51%) applicants disclosed information within Category 1 PHQs that served as one of the bases for review, and 67 out of 165 (41%) applicants were reviewed for information found in primary source material.

In examining those applicants who were reviewed based solely on Category 2 disclosures, the single most determinative factor with respect to applying conditions on licensure are *current impairments*. When applicants disclose a condition in Category 2 PHQs, the applicant must supply additional documents, usually a physician letter or a report from a monitoring program that attests to the applicant’s current fitness for practice. When this is the result, no further action is taken, and the application is allowed to continue. Whereas when the additional material indicates current concerns, the applicant is always required to enter monitoring as a condition of licensure. On review, the OMB never reaches past conditions that do or may impair the providers ability to practice.

In conclusion, Category 2 PHQs identify an increasingly small minority of applicants for the purposes of review. Careful attention to Category 1 disclosures as well as source material would likely identify the vast majority of applicants in need of review.

Based on this retrospective review, it appears that changing the structure of Category 2 questions to focus on current conditions would align with the OMB’s focus on current impairment and would not diminish the OMB’s ability to identify problematic applicants and ensure the licensure of safe and competent care providers.

⁵ This is a rare occurrence. Here, the OMB decided that a limited license would fit the applicant’s need and allow the OMB to monitor compliance through monitoring, while adhering to the Board’s mission of public safety by not approving independent practice through full licensure until deemed fit to do so. The applicant subsequently received unlimited licensure after successful compliance with the Board’s prior requirements.