



Kansas State Board of Healing Arts Guidance Document on Universal Impairment Licensure Question

In 2018, through policy, the Federation of State Medical Boards (“FSMB”) recommended state medical boards review their impairment application questions for Americans with Disabilities Act (“ADA”) compliance, and to determine whether the information the questions were designed to seek in the interest of patient safety could be better obtained through a means that was less likely to discourage professionals to seek treatment. Taking the FSMB’s recommendation seriously, the Kansas State Board of Healing Arts (“KSBHA”) underwent a review of our initial, renewal, and reinstatement impairment application questions for all professions we license and regulate.¹

In November 2019, KSBHA removed from its application and renewal forms several questions relating to mental health and impairment treatment history. We did this because, upon reflection, we realized that these questions were unnecessarily broad in some respects and might contribute to the phenomena of healthcare providers avoiding treatment due to fears of licensing consequences. We replaced these questions with a new, narrower and more focused, universal impairment question on the initial and renewal licensing application to help avoid the misperception that healthcare providers will suffer negative licensing consequences when they seek care for mental or physical health issues.

Guidance for Analysis of Impairment Licensure Questions

When reviewing impairment licensure questions for improvement, ADA compliance, and advancing physician wellness, while simultaneously continuing your duty to protect the public, here are some key things to consider:

1. Questions should inquire only about conditions that *currently* impair the applicant/licensee’s capacity to function as a licensee.²
2. FSMB, American Psychological Association (“APA”), and other organizations strongly encourage use of present tense in application questions.³
3. “Have you ever” questions (with no time limitation) are not ADA complaint.⁴

¹ KSBHA licenses 16 healthcare professions. The changes reflected in this document were made on all applications, renewals, and reinstatements for every profession.

² FSMB, *Physician Wellness and Burnout: Report and Recommendations of the Workgroup on Physician Wellness and Burnout*, Adopted as Policy (2018); APA, *Position Statement on Inquiries about Diagnosis and Treatment of Mental Disorders in Connection with Professional Credentialing and Licensing*, Position Statement 2 (2018).

³ *Id.*

⁴ See *Medical Society of New Jersey v. Jacobs*, 1993 WL 413016 (D. N.J. 1993).



4. Hypothetical questions are inconsistent with ADA standards.⁵
5. The APA recommends medical licensing bodies *not* ask applicants about past diagnosis and treatment of mental disorders.⁶ FSMB states application questions must focus only on current impairment and *not* illness, diagnosis, or previous treatment in order to be ADA compliant.⁷

Previous Impairment Licensure Questions on Kansas Applications

Previously, our initial application to practice medicine and surgery asked the following mental health and impairment related questions:

1. Do you presently have any physical or mental problems or disabilities which could affect your ability to competently practice your particular branch of the healing arts or your particular specialty?
2. Within the past 2 years, have you used any alcohol, narcotic, barbiturate, or other drug affecting the central nervous system, or other drug which may cause physical or psychological dependence, either to which you were addicted or upon which you were dependent?
3. Within the past 2 years, have you been diagnosed or treated for any physical, emotional or mental illness or disease, including drug addiction or alcohol dependency, which limited your ability to practice the healing arts with reasonable skill and safety?
4. Within the past 2 years, have you used controlled substances, which were obtained illegally or which were not obtained pursuant to a valid prescription order or which were not taken following the directions of a licensed healthcare provider?
5. Have you ever practiced your profession while any physical or mental disability, loss of motor skill or use of drugs or alcohol, impaired your ability to practice with reasonable safety?
6. Do you presently have any physical or mental problems or disabilities which could affect your ability to competently practice your profession?

⁵ Jones, J.D., *et al.*, *Medical Licensure Questions About Mental Illness and Compliance with the Americans with Disabilities Act*, 46 J. Am. Acad. Psychiatry Law, 458 (2018).

⁶ *Id.* at 460; APA, *Position Statement on Inquiries About Diagnosis and Treatment of Mental Disorders in Connection with Professional Credentialing and Licensing* (2015).

⁷ *Supra*, note 2 at 12.



Our renewal application asked:

1. In the past 12 months have you suffered from any impairment which might affect your ability to safely practice, been referred to and/or participated in a program for impaired providers?

New Universal Impairment Question on Kansas Applications

Do you currently have any physical or mental health conditions (including alcohol or substance use) that impairs your judgment or would otherwise adversely affect your ability to practice your profession in a competent, ethical, and professional manner? (Yes/No)

Conclusion

By reviewing and implementing changes to impairment licensure questions, medical boards will advance healthcare professionals physical and mental health, reduce fear in engaging in and sustaining treatment, reduce stigma, and promote patient safety and the deliver of quality health care. Its important to note, changes consistent with this guidance will not alter medical Boards' duty to protect the public. Only individuals who are fully qualified to practice are licensed.