Message From the TMB President:
Mental Health Questions and Supervision Issues

Application & Renewal Questions on Mental Health

Recommendations made by the Federation of State Medical Boards, the American Medical Association, and other physician groups have advocated for less “probing” questions asked of applicants and physicians renewing their licenses that are limited to “current impairment.” These recommendations come at the time when there is increased awareness of physician wellness issues in the medical community.

The Medical Board is charged first and foremost with protecting the public, and one primary way it achieves this is through the licensure process by ensuring individuals wishing to practice medicine in the state of Texas are adequately trained and competent to safely practice.

The Medical Board’s application and renewal questions were last revised in 2014 after several years of stakeholder meetings that included the input of representatives from Texas medical schools, postgraduate training programs and hospitals. The revised questions, based on Americans with Disabilities Act standards, were ultimately approved by the Board in their current form in February 2014.

The Board’s Licensure Committee more recently reexamined the current set of questions, and while changes are not immediately forthcoming, the Board remains committed to working with our stakeholders and maintaining an open dialogue to address future concerns.

What is extremely important to reiterate to our current licensees and future applicants is that a physician reporting a mental health condition does not automatically trigger an investigation or possible enforcement action.

Physicians can absolutely seek mental health treatment without fear of facing an automatic enforcement action against their license. When applicants answer “yes” to a mental health question, the Board will request additional information regarding a physician’s continued care and treatment to verify a physician is not impaired or a risk to patients. There also remain several avenues for a physician to self-refer to the Texas Physician Health Program to maintain compliance and ensure they are safely practicing (See “Duty to Report Impairment,” Page 4, January 2018 TMB Bulletin.) Only if a physician is non-responsive to the Board requesting additional information, would it result in an automatic referral to investigations.

The Board is mindful of the issues surrounding the reporting of mental health conditions and perceived stigma of seeking treatment. The Board also understands that treatment of medical conditions is a normal part of peo-

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ple’s lives and receiving such treatment does not itself disqualify an applicant from licensure or prohibit renewal of a license.

Supervision Issues and Medical Spas

There have been concerns, highlighted by several recent news stories, related to a lack of proper supervision while patients are receiving treatment for certain cosmetic procedures and purported stem cell treatments. This serves as an important opportunity to highlight the rules concerning supervision requirements for physicians in these areas of medical practice.

The Medical Board’s rules relevant to medical spas, specifically the types of procedures performed in these settings, fall under Chapter 193 – Standing Delegation Orders, which establishes the guidelines for physicians delegating to qualified non-physicians to provide services to patients while under physician control and supervision.

Rules allow for certain procedures to be performed by a qualified non-physician. These non-surgical cosmetic procedures can include injections and the use of prescription medical devices for cosmetic purposes. The rules do not, however, allow for these procedures to be performed without either a physician or midlevel practitioner (physician assistant or advanced practice registered nurse) being onsite, or a physician being available for emergency consultation or appointment in the event of an adverse outcome. The rules also do not allow for midlevels and non-physicians to conduct these types of procedures without the proper physician supervision as required.

Prior to the procedure being performed, several steps must be taken by the physician, or the midlevel acting under the delegation of the physician. These include the following:

- a patient history and physical examination;
- an appropriate diagnosis and recommended treatment;
- a detailed and written treatment plan;
- the patient’s informed consent;
- instructions for emergency and follow-up care;
- an appropriate medical record prepared and maintained;
- signed and dated written protocols detailing to a level of specificity that the person performing the procedure may readily follow; and
- signed and dated written standing orders.

Importantly, the performance of all the aforementioned must be documented in the patient’s medical record.

After the patient has been properly evaluated, diagnosed and a treatment plan developed, qualified unlicensed personnel may perform a procedure only if a physician or midlevel is onsite or a physician is available in the event of an adverse outcome as previously noted.

The physician must ensure that the person performing a procedure has appropriate training in, at a minimum:

- techniques for each procedure;
- cosmetic or cutaneous medicine;
- indications and contraindications for each procedure;
- pre-procedural and post-procedural care;
- recognition and acute management of potential complications that may result from the procedure; and
- infectious disease control involved with each treatment.

Regardless of who performs the procedure, the physician is responsible for the safety of the patient and all aspects of the procedure and that documentation of the procedure is timely co-signed by the supervising physician and adequately documented in the patient’s medical record.

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Physicians have not only a moral obligation, but also a legal obligation to report colleagues who they believe are impaired. The duty to report impairment to the Medical Board is required by the Medical Practice Act. This applies to any physician, medical student, resident or medical peer review committee.

Under Chapter 160, specifically Sec. 160.004 Report Regarding Certain Impaired Physicians, a person or committee, as defined in the section, "may report to the board or to a health care entity in which an affected physician has clinical privileges the name of the impaired physician together with pertinent information related to that impairment;" and the person or committee "shall report to the board and any known health care entity in which the physician has clinical privileges if the person or committee determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare."

A report made under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, the Texas Public Information Act.

The Medical Practice Act also provides immunity from civil liability to those who make reports under this chapter. The following are immune from civil liability: (1) a person who, in good faith, reports or furnishes information to a medical peer review committee or the board; (2) a member, employee, or agent of the board, a medical peer review committee, or a medical organization committee, or a medical organization district or local intervenor, who takes an action or makes a recommendation within the scope of the functions of the board, committee, or intervenor program, if that member, employee, agent, or intervenor acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to that person; and (3) a member or employee of the board or any person who assists the board in carrying out its duties or functions provided by law.

Rehabilitation

It is important to note that reporting, and self-reporting, of impairment does not automatically result in discipline against a physician. The Board utilizes a program that focuses on rehabilitation rather than discipline. If a physician voluntarily self-reports to the Board a substance use disorder/impairment issue, and does not have a previous related disciplinary action, the Board has discretion to refer the physician through a confidential referral to the Texas Physician Health Program (TXPHP), which also provides the physicians with the option of referring themselves or an impaired colleague to a third party. One of the advantages of the program is if a potential impairment issue comes to the attention of the Board before any patient safety violations occur, the Board can refer the licensee to TXPHP without issuing a disciplinary order. This allows for the licensee to receive treatment and monitoring while ensuring public protection. Only if the terms of the agreement made with TXPHP are violated, is the individual reported to the Board to evaluate whether discipline may be necessary. The Board also maintains its ability to temporarily remove a physician from practice who is a continuing threat through its emergency suspension/restriction process.

Texas Physician Health Program

Since 2010, the Texas Physician Health Program (TXPHP) has served as a valuable resource for the rehabilitation of health professionals in the state. TXPHP accepts self-referrals as well as referrals from the Texas Medical Board, concerned colleagues, hospitals and others. The program is overseen by experts in mental health and substance abuse issues. A monitoring program may include random drug screens; written reports from counselors or therapists; self-reports provided by the licensee in recovery; and written verification of attendance at self-help or support group meetings. Indi-
Duty to Report Impairment, Cont.

For more information on TXPHP, visit: http://www.txphp.state.tx.us/index.html

Board Rules

The following rules were adopted since the publication of the previous bulletin. After publication in the TX Register, the rules with effective date will be posted on the TMB website: http://www.tmb.state.tx.us/page/board-rules.
For full rule text in the Texas Administrative Code, visit: http://texreg.sos.state.tx.us/public/readtac$ext_viewtac

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CHAPTER 163. LICENSURE
The amendments to §§163.2, 163.4, 163.6, 163.13, and the repeal of §163.7, concerning Licensure.

The amendment to §163.2, concerning Full Texas Medical License, deletes language under subsection (d)(5)(A) setting forth requirements related to §163.7 of this title (relating to the Ten Year Rule). The amendments reflect the repeal of §163.7 of this title.

The amendment to §163.4, concerning Procedural Rules for Licensure Applicants, deletes language under subsection (d)(5)(D) related to §163.7 of this title. The amendments reflect the repeal of §163.7 of this title.

The amendment to §163.6, concerning Examinations Accepted for Licensure, deletes language under subsection (e)(1), requiring that an applicant pass the jurisprudence examination within three attempts. The changes are made pursuant to Senate Bill 674 (85th Legislature, Regular Session).

The repeal of §163.7, concerning Ten Year Rule, repeals requirements that an applicant have passed an examination listed in §163.6(a) of this title (relating to Examinations Accepted for Licensure) for licensure within the ten-year period prior to the filing date of the application. The amendments remove an unnecessary impediment to licensure for physicians who have maintained competency through the active practice of medicine, and otherwise meet all general eligibility requirements.

The amendment to §163.13, concerning Expedited Licensure Process, adds a new subsection (b), creating an expedited licensing process for out-of-state psychiatrists. The new language is in accordance with Senate Bill 674, 85th Legislative Regular Session, which requires the Board to create an expedited licensing process for applicants who hold an unrestricted license to practice medicine issued in another state, are board certified in psychiatry, and meet other general eligibility requirements.

CHAPTER 171. POST GRADUATE TRAINING PERMITS
The amendment to §171.3, concerning Physician-in-Training Permits, adds language to subsection (d)(2)(C), clarifying that a physician-in-training permit shall expire not only upon the date the permit holder obtains full licensure, but temporary or limited licensure as well. The purpose of the amendment is to align the language of §171.3 with §163.9 of this title (relating to Only One License), which provides that a person may not have more than one license or permit at the same time, and that upon the issuance of any license or permit, all previously issued licenses and permits, including postgraduate training permits, shall be considered to be terminated.

CHAPTER 172. TEMPORARY AND LIMITED LICENSES
The amendments to §172.4, concerning State Health Agency Temporary License and §172.8, concerning Faculty Temporary License.

The amendments to §172.4, deletes language under paragraphs (1)(C) and (2)(A) referencing §163.7 of this title (relating to the Ten Year Rule). The amendments reflect the repeal of §163.7 of this title.

The amendments to §172.8, deletes language under subsection (a)(2), requiring that an applicant pass the jurisprudence examination within three attempts. The changes are made pursuant to Senate Bill 674 (85th Legislature, Regular Session). Further amendments to subsection (k), delete language referencing §163.7 of this title. The amendments reflect the repeal of §163.7.