

# Florida Board of Bar Examiners

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September 27, 2018

The Honorable R. Fred Lewis  
Justice, Supreme Court of Florida  
The Supreme Court Building  
500 South Duval Street  
Tallahassee, FL 32399-1925

Dear Justice Lewis:

At its June 2018 policy retreat in Orlando, the board reviewed its investigative process as it relates to mental health. The impetus for including this topic on the agenda arose from comments made at town hall events regarding mental health and wellness held by The Florida Bar over the past year. The board discussed the perception held by some that the board's investigation of mental health issues has an unintended effect of discouraging law students or lawyers from seeking counseling or treatment for stress and anxiety.

The perception that seeking treatment for stress or anxiety will delay, or lead to the denial of, a bar application is inaccurate. In fact, in 2014, the board revised the mental health inquiries on the Florida Bar Application to reflect the board's investigative focus on a limited set of severe thought and mood disorders, such as schizophrenia, bipolar disorders, and major depressive disorder. The board's mental health consultant has advised that, without effective treatment, those severe disorders have an especially high likelihood of recurrence and impairment of one's ability to practice law.

The board also investigates other mental health conditions when it learns that the condition may have been a factor in potentially disqualifying conduct. However, simply seeking counseling for stress or anxiety has not, and will not, affect the processing of a bar application, and applicants need not report counseling for stress and anxiety, in and of itself, to the board.

As part of its discussion at the June 2018 policy retreat, the board, with input from Chief Justice Canady and Justice Lawson, discussed how it could better communicate with applicants to dispel any misconceptions about the board's process. The goal was to clarify that an applicant should not avoid seeking mental health treatment for fear that it would affect their admission to the bar or slow the review of their application. Paramount in these discussions was of course the board's obligation is to protect the public by fully exploring and understanding an applicant's background before recommending admission to the bar.

The board resolved to undertake a review of the mental health questions on the bar application, the Frequently Asked Questions section on our website, and the board's annual presentation to first-year law students across the State. As part of this review over the last few months, we involved our mental health consultant, for his medical expertise, and our outside legal counsel, to ensure that any changes complied with the Americans with Disabilities Act.

As a result of this undertaking, the board has revised Items 25 and 26 on the Florida Bar Application to further clarify its focus on those thought and mood disorders that are especially likely to impair one's ability to practice law. The revised Items 25 and 26 explicitly provide that seeking counseling for stress and anxiety will not adversely affect an applicant and need not be reported, which is consistent with the board's prior practice.

Enclosed are the current mental health bar application Items 25 and 26 adopted in 2015, a redline edit to those questions, and a final copy of revised Items 25 and 26 for the Court's consideration. The board believes that these changes preserve the board's ability to conduct a full character and fitness investigation to protect the public while directly addressing the point that applicants should get mental health treatment when needed.

The board is prepared to implement these changes to the bar application and to update its applicant portal to include the revised application on November 1, 2018, in advance of the November 15, 2018, filing deadline for the February 2019 examination unless the Court has any reservations about the changes.

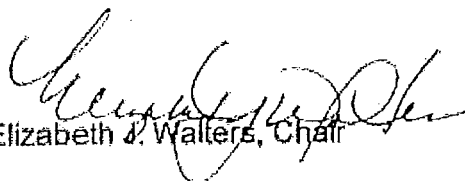
In addition to the revised bar application questions, the board has revised our presentation given to first-year students at each of the 12 law schools in Florida. We began using these revised slides with our presentations this fall. The slides in the board's presentation about mental health and substance use disorders were modified to clarify what applicants must report on the Florida Bar Application and, conversely, the types of treatment that applicants are not required to report. The board has also revised the FAQs on the board's website to clarify these distinctions. Copies of the revised slides and FAQs are enclosed.

The board believes that the revisions add clarity to the bar application, the presentations at Florida law schools, and the board's website. And, the changes continue to allow the board to protect the public with a thorough background investigation while providing additional encouragement for students and attorneys to seek treatment when needed.

The Honorable R. Fred Lewis  
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Missy and I welcome the opportunity to visit with you regarding these changes if beneficial. If you would like additional information or have any questions, please let either of us know.

Most respectfully yours,



Elizabeth J. Walters, Chair

Enclosures: Current mental health bar application Items 25 and 26 adopted in 2015  
A final copy of revised Items 25 and 26 for the Court's consideration  
A redline edit to Items 25 and 26  
Revised slides for first-year law students presentation  
Revised FAQ's on board website

MC: Scott L. Baena, Vice Chair  
Michele A. Gavagni, Executive Director  
James T. Almon, General Counsel



## **Florida Bar Application Items 25 and 26: Current, Revised, and Redline**

### **Current Items 25 and 26**

The Board of Bar Examiners must assess effectively the mental health of each applicant. A lawyer's untreated or uncontrolled mental disorder, if severe, could result in injury to the public. Questions 25 and 26 request information essential to the Board's assessment. Answering Questions 25 and 26 in the affirmative is not automatically disqualifying for admission to The Florida Bar. The Board assures each applicant that the Supreme Court, upon the Board's recommendation, regularly admits applicants with a history of both mental disorders and treatment by mental health professionals. The Board considers satisfactory mental health to include (1) the current absence of an untreated, uncontrolled mental disorder that impairs or limits an applicant's ability to practice law in a competent and professional manner, (2) the unlikelihood of a relapse of such a prior mental disorder, and (3) the applicant's having a history of appropriate treatment. With respect to any of the above, evidence of treatment by a mental health professional is useful. The Board encourages applicants to seek the assistance of mental health professionals, if needed.

25. Within the past 5 years have you been diagnosed with, suffered from, or been treated for a mental illness involving a severe thought disorder (including, but not limited to, schizophrenia), a severe mood disorder (including, but not limited to, major depressive disorder or bipolar disorder) or substance use disorder (including, but not limited to abuse of or addiction to/dependence on alcohol, marijuana, cocaine, or prescription medications)?



If yes, identify which of the listed conditions you were diagnosed with, suffered from or were treated for, state the beginning and ending dates of each consultation or treatment period, and state the name and address of the treating doctor(s) or professional(s) who treated you or who made such diagnosis. Also state the name(s) of any medication prescribed for you during treatment. Please direct each such professional and any hospital and/or other facility in which you were treated to furnish to the Board any information or records the Board may request with respect to any hospitalization, consultation, treatment or diagnosis relating to any such listed condition. "Professional" includes a physician, psychiatrist, psychologist, psychotherapist or mental health counselor.

26. Do you currently (as hereinafter defined) have a mental health condition (not reported above) which in any way impairs or limits, or if untreated could impair or limit, your ability to practice law in a competent and professional manner? If yes, are the limitations or impairments caused by your mental health condition reduced or ameliorated because you receive ongoing treatment (with or without medications) or participate in a monitoring or counseling program? If yes, describe such condition and any treatment or program of monitoring or counseling. "Currently" does not mean on the day of, or even in the weeks or months preceding the completion of this application; rather, it means recently enough so that the condition may have an ongoing impact on your functioning as a licensed attorney.

### **Revised Items 25 and 26**

The Board of Bar Examiners, as part of its responsibility to protect the public, must assess whether an applicant manifests any mental health or substance use issue that impaired or could impair the applicant's ability to meet the essential eligibility requirements for the practice of law.

The Board supports applicants seeking mental health or substance use treatment, and views effective treatment by a licensed professional as enhancing the applicant's ability to meet the essential eligibility requirements to practice law.

Seeking counseling to assist with stress or anxiety will not adversely affect the outcome of a Florida Bar Application. The Board does not request that applicants disclose such counseling.

25. Within the past 5 years, have you been treated for, or experienced a recurrence of, schizophrenia or any other psychotic disorder, a bipolar disorder, or major depressive disorder, that has impaired or could impair your ability to practice law?

If your answer to Item 25. is "yes," please: (i) identify each condition for which you received treatment or had a recurrence; (ii) state the beginning and end dates of any treatment (or state "present" if no end date); (iii) state the name and address of each professional who treated you; and (iv) identify any medication that was prescribed for you during treatment. Please direct each treating professional to provide any information or records that the Board may request regarding treatment, which includes, without limitation, hospitalization.

26. Within the past 5 years, have you been treated for, or had a recurrence of, a substance-related disorder that has impaired or could impair your ability to practice law?

For Item 26., the term "substance-related" includes, without limitation, alcohol, marijuana, cocaine, and misuse of prescription drugs.

If your answer to Item 26. is "yes," please: (i) identify each substance involved in your treatment or recurrence; (ii) identify any substance use disorder diagnosis; (iii) state the beginning and end dates of any treatment (or state "present" if no end date); (iv) state the name and address of each professional who treated you; (v) if applicable, state your sobriety date; and (vi) if applicable, describe your participation in any recovery program and your current support system.

#### **Revisions to Items 25 and 26 in Redline**

~~The Board of Bar Examiners must assess effectively the mental health of each applicant. A lawyer's untreated or uncontrolled mental disorder, if severe, could result in injury to the public. Questions 25 and 26 request information essential to the Board's assessment. Answering Questions 25 and 26 in the affirmative is not automatically disqualifying for admission to The Florida Bar. The Board assures each applicant that the Supreme Court, upon the Board's recommendation, regularly admits applicants with a history of both mental disorders and treatment by mental health professionals. The Board considers satisfactory mental health to include (1) the current absence of an untreated, uncontrolled mental disorder that impairs or limits an applicant's ability to practice law in a competent and professional manner, (2) the unlikelihood of a relapse of such a prior mental disorder, and (3) the applicant's having a history of appropriate~~



~~treatment. With respect to any of the above, evidence of treatment by a mental health professional is useful. The Board encourages applicants to seek the assistance of mental health professionals, if needed.~~

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25. ~~Within the past 5 years have you been diagnosed with, suffered from, or been treated for, or experienced a recurrence of, a mental illness involving a severe thought disorder (including, but not limited to, schizophrenia or any other psychotic disorder), a bipolar disorder, or major depressive disorder, a severe mood disorder (including, but not limited to, major depressive disorder or bipolar disorder) or substance use disorder (including, but not limited to abuse of or addiction to/dependence on alcohol, marijuana, cocaine, or prescription medications) that has impaired or could impair your ability to practice law?~~

If your answer to Item 25. is "yes," please identify: (i) ~~which of the listed~~ each condition for which you received treatment or had a recurrence you were diagnosed with, suffered from or were treated for; (ii); state the beginning and ending dates of each consultation or any treatment (or state "present" if no end date); period; (iii) and state the name and address of the treating doctor(s) or each professional(s) who treated you; or who made such diagnosis. Also state and (iv) identify the name(s) of any medication that was prescribed for you during treatment. Please direct each treating such professional and any hospital and/or other facility in which you were treated to furnish to provide to the Board any information or records the Board may request regarding treatment, which includes, without limitation, hospitalization. with respect to any hospitalization, consultation, treatment or diagnosis relating to any such listed condition. "Professional" includes a physician, psychiatrist, psychologist, psychotherapist or mental health counselor.

26. ~~Do you currently (as hereinafter defined) have a mental health condition (not reported above) which in any way impairs or limits, or if untreated could impair or limit, your ability to practice law in a competent and professional manner? If yes, are the limitations or impairments caused by your mental health condition reduced or ameliorated because you receive ongoing treatment (with or without medications) or participate in a monitoring or counseling program? If yes, describe such condition and any treatment or program of monitoring or counseling. "Currently" does not mean on the day of, or even in the weeks or months preceding the completion of this application;~~

~~rather, it means recently enough so that the condition may have an ongoing impact on your functioning as a licensed attorney.~~

26 Within the past 5 years, have you been treated for, or had a recurrence of, a substance-related disorder that has impaired or could impair your ability to practice law?

For Item 26., the term "substance-related" includes, without limitation, alcohol, marijuana, cocaine, and misuse of prescription drugs.

If your answer to Item 26. is "yes," please: (i) identify each substance involved in your treatment or recurrence; (ii) identify any substance use disorder diagnosis; (iii) state the beginning and end dates of any treatment (or state "present" if no end date); (iv) state the name and address of each professional who treated you; (v) if applicable, state your sobriety date; and (vi) if applicable, describe your participation in any recovery program and your current support system.



**UNTREATED Substance Use Disorders  
and  
UNTREATED Severe Mental Health Disorders**

Treatment for stress and anxiety **IS**:

- Encouraged by the Florida Board of Bar Examiners

Treatment for substance use and mental health **IS**:


- Encouraged by the Florida Board of Bar Examiners

Treatment for substance use or mental health **IS NOT**:

- Cause For Delay in Bar Admission Process
- Disqualifying

Florida Lawyers Assistance offers confidential services for:

- Substance Abuse and Mental Health Support
- Stress and Anxiety Support
- Health and Wellness Counseling

  
**FLA**  
 FLORIDA LAWYERS  
 ASSISTANCE

(800) 282-6981  
[www.fl-a-lap.org](http://www.fl-a-lap.org)


The board is concerned if an applicant has an untreated substance use disorder or untreated severe mental health disorder. Note the emphasis here is on “untreated.” Be assured that the Supreme Court, on the board’s recommendation, regularly admits applicants with a history of both mental health conditions and treatment by mental health professionals.

In cases involving severe mental health conditions that if untreated could impair or limit an applicant’s ability to practice law in a competent and independent manner, the board requires evidence that the applicant is undergoing treatment. Applicants with such conditions may be offered conditional admission by which they agree to regularly consult with their mental health providers and follow all instructions of that provider, who will regularly report to The Florida Bar about the applicant during a prescribed probationary period.

UNTREATED substance use disorders can lead to a delay in admission, so if you think you have a problem with alcohol or other substances, the board encourages you to address it now, including consultation with Florida Lawyers Assistance. Information about Florida Lawyers Assistance is available from your Dean. You may also contact the agency confidentially via the website. **(click)**

**UNTREATED Substance Use Disorders**  
and  
**UNTREATED Severe Mental Health Disorders**  
**WHAT DO I HAVE TO REPORT?**

<p>What to disclose:</p> <ul style="list-style-type: none"> <li>• Substance Use Disorders             <ul style="list-style-type: none"> <li>• Dependency and Abuse</li> </ul> </li> <li>• Severe Thought Disorders             <ul style="list-style-type: none"> <li>• Schizophrenia</li> <li>• Psychotic Disorder</li> </ul> </li> <li>• Severe Mood Disorders             <ul style="list-style-type: none"> <li>• Bipolar Disorder</li> <li>• Major Depressive Mood Disorder</li> </ul> </li> </ul>	<p>What <b>NOT</b> to disclose (<b>WILL NOT BE INVESTIGATED</b>):</p> <ul style="list-style-type: none"> <li>• Adjustment disorders</li> <li>• Attention Deficit Disorder</li> <li>• General Anxiety and General Depression</li> <li>• Grief or marital counseling</li> <li>• Stress management or counseling</li> </ul>
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The Florida Bar Application requires disclosure of substance use disorders, such as dependency, addiction and abuse. Severe mental health disorders are required to be disclosed. Severe mental health disorders include, but are not limited to, schizophrenia, psychotic disorders, bipolar disorder and major depressive mood disorder.

The bar application does not require you to disclose treatment for adjustment disorders, general anxiety, general depression and attention deficit disorder. Nor does it require you to disclose stress, marital or grief counseling. It is important to emphasize that the board encourages applicants experiencing difficulty of coping with the stress of law school and daily life to seek counseling through Florida Lawyer's Assistance, your school's counseling center or a private treatment provider. No matter what else you may hear, you will not be penalized for seeking counseling. Be assured that you are not required to report such counseling and, if you do, the board will not investigate it. **(click)**

### **Mental Health FAQs for Board Website**

**Does Florida have a program to assist lawyers or law students with substance misuse or mental health?**

Yes. Florida Lawyers Assistance, Inc. ("FLA") provides services relating to substance use or mental health to assist attorneys, law students, and other legal professionals. For more information on FLA, see <https://www.fla-lap.org/> or call 1-800-282-8981.

**What does the Florida Bar Application ask about an applicant's mental health?**

Item 25. on the Florida Bar Application asks applicants to disclose any treatment for, or recurrence of, certain thought disorders (Schizophrenia and other psychotic disorders) and mood disorders (Bipolar Disorder and Major Depression) that could impair an applicant's ability to practice law. When applying, you should read Item 25. carefully. If you are unsure of how to answer it, consider consulting with your mental health provider.

The Board supports applicants seeking mental health treatment, and views effective treatment from a licensed professional as enhancing the applicant's ability to meet the essential eligibility requirements to practice law.



**I sought counseling for stress or anxiety while I was in law school or as a practicing lawyer in another State. Do I need to report my treatment for stress or anxiety on my Florida Bar Application?**

No. The Florida Bar Application asks applicants to disclose only certain thought disorders (Schizophrenia and other psychotic disorders) and mood disorders (Bipolar Disorder and Major Depression) that could impair an applicant's ability to practice law. You do not need to disclose any other mental health conditions or treatment, including any counseling for stress or anxiety.

The Board supports applicants seeking mental health treatment, and views effective treatment as enhancing the applicant's ability to meet the essential eligibility requirements to practice law.

**Will my mental health information be kept confidential?**

Yes. Like all matters before the board, any information about an applicant's mental health is confidential.

**What does the Florida Bar Application ask about substance use?**

Item 26 on the Florida Bar Application asks you to disclose any treatment for, or recurrence of, a substance-related disorder that could impair your ability to practice law. "Substance-related" includes, without limitation, alcohol, marijuana, cocaine, and misuse of prescription drugs.

**What is conditional admission?**

In some cases involving substance misuse, certain mental health conditions, or both, the board may recommend a conditional admission. A conditional admission allows a person to practice law in Florida so long as he or she complies with treatment-

related conditions for a defined time period. If the person complies with the conditions during the period for conditional admission, then the person may continue practicing law without conditions going forward.

The specific terms of the conditional admission, such as the length of time, depend on the applicant's particular circumstances. For example, in cases involving drug or alcohol misuse, conditional admission involves a period of documented sobriety and participation in an abstinence-based support program. A conditional admission relating to mental health involves the applicant continuing regular treatment with the applicant's mental health provider. If you have questions or would like more information about conditional admission, please write to the board.

**Is conditional admission confidential?**

Yes. Like all matters before the board, conditional admission is confidential.

**I am an out-of-state lawyer who is interested in conditional admission in Florida. Will the board accept monitoring by another state's lawyer assistance program as documentation of sobriety?**

Yes. Generally speaking, monitoring in connection with another state's lawyer assistance program will count toward documentation of sobriety provided the program includes a random drug and alcohol testing component. Please write to the board if you have a question about whether a specific program will qualify.

