

# Medical Licensure Questions About Mental Illness and Compliance with the Americans With Disabilities Act

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Substantial numbers of medical students and physicians live with some form of mental illness. Over the years, many medical licensure boards have asked physician medical licensure applicants with Doctor of Medicine (MD) degrees intrusive questions about whether they have any psychiatric history. This has discouraged many who need psychiatric treatment from seeking it because of fear of the questions. Gradually, court decisions and the United States Department of Justice have established that such questions violate the Americans with Disabilities Act (ADA). The 2014 Louisiana Supreme Court Settlement Agreement set definite limits on law licensure mental health questions, followed by a least one licensing body revising its physician licensure questions to be consistent with ADA standards. In this article we examine the current medical licensure questions from each state and the District of Columbia about the mental health of applicants and discuss their validity under ADA standards. Our original investigation of these questions found that the majority still ask questions that are unlikely to meet ADA standards. The judicial and Department of Justice developments, however, may compel them to abandon these questions. If not, legal action will enforce ADA compliance. This change will significantly benefit applicants who need psychiatric treatment.

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Professional licensing bodies in medicine, law, dentistry, nursing, psychology, and other regulated professions are obligated to protect the public from professionals who are impaired by serious mental illness (like several other recent articles, this article does not include professionals impaired by substance abuse).<sup>1–3</sup> This duty seemingly can conflict with

the public policy objective of the Americans with Disabilities Act (ADA),<sup>4</sup> which seeks to prevent discrimination against those with disabilities, including psychiatric disabilities.<sup>3,5</sup> Specifically, the ADA applies to professional licensing bodies<sup>6–8</sup>; historically, a number of these groups have not acted in accordance with it. Title II of the ADA prohibits discrimination by public entities on the basis of disability. In particular, the regulations enforcing the law say that a “public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disability to discrimination on the basis of disability.”<sup>8</sup> Nor can a public entity, such as a licensure board, “impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability . . . unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.”<sup>5</sup>

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This article focuses on questions asked of applicants for initial medical licensure for physicians with Doctor of Medicine (MD) degrees about any psychiatric history. For context, this article also

reviews how questions about licensure have been handled for attorneys. Throughout this article, we distinguish between competently functioning professionals who have lived with a psychiatric disorder or who are being treated for a mental health condition versus physicians whose professional functioning is currently impaired for psychiatric reasons. **We argue that only those who are currently impaired should be prohibited from working** as licensed professionals or have other measures taken to ensure quality and safety of care if they are allowed to practice.

This article first **reviews the prevalence of psychiatric illness** among medical students and physicians. It then turns to **the stigma** faced by those so afflicted. Next, it reviews the **legal precedents** regarding the validity of licensure questions about these concerns with a focus on the seminal **2014 Louisiana Supreme Court Settlement Agreement**. This review is followed by a detailed presentation of the questions currently asked by the medical licensure bodies in the 50 states and the District of Columbia and an evaluation of their validity under the ADA.

### **Mental Illness and Stigma in the Medical Profession**

#### **Illness vs Impairment**

At the outset, it is essential to differentiate the terms illness and impairment. Unfortunately, some regulatory agencies consider illness as synonymous with impairment. **Illness** is the existence of a disease. **Impairment** is a functional classification and, as defined by the American Medical Association (AMA), refers to "the inability to practice medicine with reasonable skill and safety due to 1) mental illness, 2) physical illnesses, including but not limited to deterioration through the aging process, or loss of motor skill, or 3) excessive use or abuse of drugs, including alcohol."<sup>9</sup>

Numerous sources attest to the relatively high prevalence of mental illness in the medical profession, often beginning during medical training. The mental health of entering medical students, which has been demonstrated to be similar to that of the general population on entry into medical school, declines significantly in the next two years.<sup>10–12</sup> One study found that at the end of their first year, 57 percent of medical students had moderate to severe symptoms of anxiety and 27 percent have moderate to severe symptoms of depression.<sup>10</sup> Depressed med-

ical students were more likely than their peers to seriously consider suicide.<sup>13</sup> Female medical students had significantly higher levels of depression, anxiety, and psychological distress than their male peers, and single students had higher depression rates than married students.<sup>14</sup> Medical students are less likely to seek mental health care than the general population, even though they have better access to it<sup>12</sup>: only 22 percent of depressed medical students and 42 percent of those with suicidal ideation utilize mental-health services.<sup>15</sup>

The seeds of mental illness planted in medical school bear fruit among practicing physicians.<sup>10</sup> Many medical residents have problems with distress and burnout.<sup>11,16</sup> Many physicians feel social isolation and do not take proper care of themselves.<sup>17</sup> Some follow dangerous approaches to care such as self-prescribing antidepressant medications.<sup>12</sup> **The suicide rate among male physicians is 40 percent higher than in men in the general population, and the rate for women physicians is 130 percent greater than among women in the general population.**<sup>17–19</sup> Every year 300–400 physicians and medical students die by suicide, a number equal to several medical school classes.<sup>20</sup>

Numerous medical students and practitioners who live with mental illness stay in the shadows due to fear of stigma. People with psychiatric disorders are the most stigmatized group in contemporary society; slurs against those with mental illness endure, and medical students and physicians are not exempt.<sup>21</sup>

Medical students and professionals with mental illness face particular stigma concerns.<sup>22</sup> They may pay cash for mental health treatment rather than use their health insurance to avoid having a record of their care appear in an insurance database, and may hide their faces lest someone they know recognize them while they are in their psychiatrist's waiting room.<sup>23</sup> Students who have received psychiatric treatment have reduced prospects for residency placements.<sup>15</sup> Practicing physicians with histories of psychiatric disorders or counseling for psychosocial difficulties encounter discrimination in hospital privileges, health insurance, and malpractice insurance.<sup>15</sup> **Fear of stigma prevents 30 percent of depressed first- and second-year medical students from using mental health services.**<sup>12</sup>

## Licensure Questions Regarding Mental Illness

### Medical Licensure Questions

Probably the most pervasive stigma experienced by medical professionals occurs in medical licensing.<sup>24</sup> Over the last two decades, medical licensing boards increasingly have asked about the psychiatric history of applicants. For example, a 1998 study found that 75 percent of boards did so in 1993 and 80 percent in 1996.<sup>25</sup> A 2009 review of applications from 2005 found that the vast majority of boards asked such questions and that many of the questions were unlawful under the ADA.<sup>26</sup> A 2008 article on 2006 applications had similar findings,<sup>27</sup> as did a 2017 article on 2013 applications.<sup>28</sup>

Medical licensing bodies traditionally have required applicants to disclose any history of psychiatric difficulties or receiving treatment via intrusive questions as described below. This practice departs substantially from the requirements of applicants undergoing non-psychiatric medical care.<sup>28–30</sup> The mental health questions typically focus on whether the applicant merely has a history of a psychiatric diagnosis or has ever received treatment for mental illness, not solely on conduct that actually indicates a reason for concern. The applicant may fear that non-disclosure of a psychiatric illness in a licensure application followed by a later recurrence of symptoms in the subsequently licensed physician may result in accusation by the licensure body that the applicant filed a false application, presenting potential dire professional licensure and legal consequences. This could compel the applicant to disclose information that is protected by the ADA, such as a problem resolved years before (e.g., an adolescent episode of depression in the case of a now psychiatrically healthy 40-year-old applicant). A positive response leads to additional questions and a demand for access to all of the applicant's mental health records from psychiatrists, therapists, and hospitals.<sup>15,29</sup> The Mississippi board mandates that:

By submission of an application for licensing to the Board, an applicant shall be deemed to have given his or her consent to submit to physical or mental examinations if, when and in the manner so directed by the Board and to waive all objections as to the admissibility or disclosure of findings, reports or recommendations pertaining thereto on the grounds of privileges provided by law. The expense of any such examination shall be borne by the applicant.

This questioning not only may deter applicants from seeking a license there, but it is also inconsistent

with the views of the American Psychiatric Association (APA), which says that having a psychiatric history is not an accurate predictor of mental fitness and, accordingly, status questions are inappropriate and irrelevant to the question of current impairment.<sup>5,31</sup> A 2015 Position Statement from the APA recommended that medical licensing bodies not ask applicants about past diagnosis and treatment of mental disorders.<sup>32</sup> *Medical Society of New Jersey v. Jacobs* barred similar questions,<sup>1</sup> as have several law licensure cases.<sup>33–35</sup>

The AMA has also taken a stand on medical licensure questions pertaining to mental health. In 2009 its Section Council on Psychiatry proposed a resolution against medical licensing bodies' questions about past mental illness, and it was approved with wide support.<sup>36</sup> In November 2016 the AMA House of Delegates unanimously approved a Section Council on Psychiatry resolution asking medical licensing boards not to ask questions about history of mental illness. This was at least in part because such questions may deter medical students and trainees from seeking needed mental health treatment.<sup>37</sup> Earlier in 2016 the AMA Council on Medical Education endorsed as a model Colorado's "safe haven" process.<sup>38</sup> Under it, licensure applicants who are participating in the Colorado Physician Health program need not report having a psychiatric condition to the Colorado medical licensing board despite its questions about having such a condition.<sup>39</sup>

Gradually, because of the ADA, courts and the United States Department of Justice (DOJ) have attacked these questions by professional licensing bodies and the process to which they give rise. This effort has been buttressed by the educational efforts of the AMA, the APA, and others that diagnosis does not equate with disability. Yet, some professional licensing bodies still use these questions. The result can be that applicants for medical licenses do not seek mental health treatment they need so as to avoid answering "yes" to the application questions.<sup>15,29</sup> There is evidence that questions by medical boards may deter students and trainees from getting help.<sup>40,41</sup> Pertinent is a 2016 article about a survey of more than 2,000 female physicians and the impact of diagnosis and treatment questions on them.<sup>19</sup> Half of them believed that at some time they had met the criteria for a psychiatric disorder but had not sought treatment for it. A number of those physicians reported this was because of their concern over mental health



licensure questions.<sup>19</sup> Although the participants in this study were physicians, not medical students, this finding may also apply to students.

Ironically, this deterrence effect can increase the number of professionals with untreated psychiatric illness who thus pose a risk to their patients.<sup>30,42</sup> They also pose a risk to themselves. A qualitative research study in which the researcher interviewed family members of physicians who had died by suicide disclosed that a significant minority of the decedents (34 physicians total) had killed themselves without ever receiving any treatment whatsoever. The interviewees described their physician loved ones as terrified that seeking mental health care would preclude them from being able to obtain or renew their medical licenses.<sup>43</sup>

*Medical Society of New Jersey v. Jacobs*<sup>44</sup> was one of the earliest cases addressing the ADA and licensing. In that unpublished decision, the court addressed questions the medical licensing board asked of applicants. The questions asked the applicants about any psychiatric problems. An affirmative response required a detailed explanation. The court discussed the ADA in detail and held that broad questions about diagnosis rather than conduct were unlawful as they led to extra investigation and invidious discrimination of those with disability status. The court concluded that the licensing board “may not . . . carry out its duties in a fashion that discriminates against applicants with disabilities based on the status of the applicants.”<sup>44</sup>

#### Law Licensure Questions

Perhaps not surprisingly, the body of law on questions involving a person with a mental illness obtaining a law license is much more developed than licensing in the medical arena. Every state bar in the United States requires applicants to prove they have good moral character and are fit to practice law, and one of the areas upon which character and fitness committees focus is a psychiatric history. The courts are likely to turn to decisions in the content of law licensure as related precedent for medical licensure questions. Indeed, several articles in medical journals have viewed law and medical licensure precedents as being interchangeable.<sup>5,26,27,32</sup>

Many state bars have created problems for applicants with a history of psychiatric illness based solely on their having been so diagnosed rather than on their having had conduct problems. For example,

some bar examiners presume that someone who has had a psychotic episode is unfit to practice law, notwithstanding those who capably can practice despite having a history of schizophrenia.<sup>30</sup> The examiners’ underlying premise was disproved by a recent study demonstrating that attorneys who have a history of psychiatric illness are unlikely to be disciplined by the bar.<sup>1,45</sup> Thus, not only are mental health licensure questions not predictive of future misconduct, their predictive value is so low as to be unreliable.<sup>1,2</sup>

A national survey of bar questions disclosed a wide variety ranging from broadly intrusive into the private life and psychiatric history of an applicant to intrusive to minimally intrusive.<sup>46</sup> At their utmost, these questions ask, for example, if an applicant has ever been hospitalized for a mental illness, an open-ended question that can force disclosure of a problem resolved years before. The inquiries may be more limited in scope, such as asking about a diagnosis within five years of an application, but still potentially inhibiting admission to practice of individuals who are currently in good mental health. State bars classified as minimally intrusive ask no mental health questions at all. The ADA-inspired trend is to move away from very broad questions, but some state bars continue to ask them.

Another important point is that the bar should not ask questions that

penalize, through intrusive and humiliating disclosures, the applicant who prudently obtained treatment while the applicant in psychological denial about his or her . . . mental dysfunction can avoid making any disclosure. Rather than exposing applicants to sweeping requests for the candidates’ own explanations of their health status or compelled breaches of doctor–patient confidentiality, bar officials should drastically curtail investigations into health and disability conditions (Ref. 46, p 42).

The DOJ has agreed with this approach and has distinguished specific questions that are permissible under the ADA about a bar applicant’s past performance or conduct problems attributable to having a mental illness from questions that do not conform to ADA standards by asking broadly about an applicant’s psychiatric diagnosis.<sup>47</sup> Additionally, hypothetical questions (asking if a mental illness could affect their ability to practice safely) have been faulted for requiring applicants to perform the impossibility of predicting the future.<sup>48</sup> Because such questions are inconsistent with ADA standards, various courts have invalidated hypothetical questions on law licensure applications.<sup>1</sup>

In contrast with the dearth of published cases in the medical licensure setting, numerous applicants for law licenses have challenged the consistency of mental health licensing questions with ADA standards. Although some challenges have been resolved without litigation, several lawsuits have been filed.

*Clark v. Virginia Board of Bar Examiners*<sup>49</sup> was a pivotal early decision. It featured a challenge to a licensure question that asked: “Have you within the past five years been treated or counseled for any mental, emotional or nervous disorders?” The plaintiff argued the question was overbroad and not an effective way to identify unfit applicants, citing the APA position against status questions. The court concluded the question was in fact overbroad, ineffective, and had a strong deterrent effect in keeping law students from seeking needed counseling, and the question was invalidated for violating the ADA. A number of other cases in both state and federal courts threw out broad questions.<sup>33–35,50</sup> The DOJ’s battle against state bar ADA violations culminated in a Settlement Agreement with the Louisiana Supreme Court that invalidated such overly broad diagnosis and treatment questions.<sup>51</sup> Questions identified as objectionable included:

Within the past five years, have you been diagnosed with or have you been treated for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder?

Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which in any way currently affects, or if untreated could affect, your ability to practice law in a competent and professional manner?<sup>1</sup>

In the words of the DOJ:

The settlement agreement ensures the right of qualified bar applicants with mental health disabilities to have equal access to the legal profession as required by the . . . [ADA]. It prohibits the court from asking unnecessary and intrusive questions about bar applicants’ mental health diagnosis or treatment. It also requires the court to refrain from imposing unnecessary and burdensome conditions on bar applicants with mental health disabilities.<sup>52</sup>

Overall, the Louisiana Supreme Court accepted the DOJ’s finding that a number of the Court’s practices were contrary to the ADA. It agreed to discontinue these practices and to follow the ADA as interpreted by the DOJ in the future when considering bar admission applications. In addition, the Court agreed to pay a total of \$200,000 in compensation to seven individuals for actions alleged to be discrimi-

natory. The Agreement was considered a major success for both the DOJ and for the disabled applicants protected from the Court’s previous actions that were contrary to the ADA.

The Louisiana Settlement Agreement is not binding precedent in jurisdictions other than Louisiana.<sup>2,48,53</sup> Further, a Trump Administration DOJ may not enforce the ADA principles that led to it as readily as the Obama Administration did. This may mean that private litigation will be far more important in licensure cases than DOJ action, perhaps led by groups like the Bazelon Center for Mental Health Law, which filed the initial complaint against the Louisiana bar examiners that led to the Settlement Agreement,<sup>48,54</sup> or the American Civil Liberties Union (ACLU), which filed a case in Indiana.<sup>55</sup>

Because of the Louisiana Settlement Agreement, the National Conference of Bar Examiners (NCBE) extensively rewrote the mental health questions on the standard application it provides to state-level character and fitness committees for their consideration. The new questions no longer inquire whether an applicant has a specific psychiatric disorder, and they are limited to asking: Do you currently have any condition or impairment (including, but not limited to, substance abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner?<sup>1</sup>

A number of law licensure bodies have adopted the new questions, but some have not done so.<sup>1,2</sup> It remains to be determined, however, whether this question conforms with ADA standards.<sup>1,2</sup> Failure to do so risks action by the DOJ or litigation by applicants, especially those aware of the \$200,000 Louisiana settlement award.<sup>5</sup> Alternatively, they can follow the lead of the states whose bar character and fitness committees have stopped asking mental health questions entirely.<sup>1,2</sup> This is a viable option given that there is no evidence that states that have discontinued asking mental health questions have seen an increase in disciplinary actions attributable to mental illness.<sup>1,2</sup>

## Methods

Current mental health questions on initial (not renewal) physician licensure application questions from application forms for licensing bodies were collected in 2017 for all 50 states and the District of

Columbia. This information was collected from licensure board web sites and the [Federation of State Medical Boards \(FSMB\) site](#). Two authors (S.V., R.O.), reviewed the questions and separately categorized them, then cross-checked the questions and result categories for accuracy and constructed a table (Table 1) to present results of licensure questions [organized by type of question and consistency with ADA standards](#). If licensure questions from a given licensing body fit multiple categories, they were listed more than once in Table 1.

## Results

Table 1 provides details of medical licensing questions for individual licensing bodies, organized by type of question and consistency with ADA standards. Members of the first group (7 licensing bodies: Connecticut, Hawaii, Michigan, New York, Pennsylvania, Rhode Island, and West Virginia) ask no mental health questions for licensure.

Members of the second group (11 licensing bodies: Arizona, Delaware, Illinois, Iowa, Massachusetts, Nevada, New Jersey, Ohio, Tennessee, Washington, and Wisconsin) include questions about whether applicants are currently impaired by a psychiatric condition in their ability to exercise the skills and judgment of a medical professional. Questions for these licensing bodies to address current fitness use terminology specifying mental and/or physical disability. A typical question, from Massachusetts, asks: "Do you have a medical or physical condition that currently impairs your ability to practice medicine?"

The manner of inquiry about mental health for medical licensure in the 18 licensing bodies in the first two groups (no mental health questions; questions about current mental health fitness) conforms with ADA standards. The remaining 32 licensing bodies, as described below and listed in Table 1, [ask questions well outside the limits of ADA standards](#). Most of these (18 of the 32) include complex questions with multiple components [inconsistent with ADA standards](#).

Members of the third group (22 licensing bodies: Alabama, Arkansas, California, Colorado, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Montana, New Hampshire, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Vermont, and Virginia, Wyoming, and the District of Columbia) also ask about impair-

ment because of mental and/or physical disability by [inserting a hypothetical determination in their questions](#). For example, Kansas asks, "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?"

Members of the fourth group (15 licensing bodies: Alaska, Florida, Georgia, Maine, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oregon, South Dakota, Texas, Utah, and Wyoming) ask specifically about any past impairment from mental illness, including illness that may have occurred many years prior to the licensure application, ranging from the past five years to as far back as age 18 or even at any time in the applicant's life.

Members of the fifth group (9 licensing bodies: Alaska, Florida, Georgia, Kentucky, [Missouri](#), North Dakota, Oregon, Utah, and Wyoming) ask about history of hospitalization, commitment, and incompetence determination for mental illness. The time frame includes the last five years to as far back as age 18 or even at any time in the applicant's life.

Members of the sixth group (9 licensing bodies: Alabama, Alaska, Colorado, Mississippi, [Missouri](#), Montana, South Carolina, South Dakota, and Texas) broadly inquire about diagnosis or treatment for psychiatric illness or other mental health conditions. For example, Colorado asks about a diagnosis of "bipolar disorder, severe major depression, schizophrenia or other major psychotic disorder, a neurological illness, or sleep disorder," [rather than on conduct as required by the Louisiana Settlement Agreement for law examiners](#).

## Discussion

This article is the first to provide a detailed examination of medical licensing psychiatric history application questions in the wake of the 2014 Louisiana Settlement Agreement. This in-depth investigation of questions asked of applicants for initial MD licensure about any psychiatric history found that licensure application [questions of only 18 licensing bodies were consistent with ADA standards](#). The questions differed widely, and some applications are sufficiently broad that they may deter applicants with a psychiatric disorder from applying for a license to

## Medical Licensure Questions About Illness

**Table 1** Medical Licensing Questions for Individual Licensing Bodies

Type of Question	State	Question	Consistent with the Americans with Disabilities Act?
None	Connecticut	None	Y
	Hawaii		Y
	Michigan		Y
	New York		Y
	Pennsylvania		Y
	Rhode Island		Y
	West Virginia		Y
Current fitness	Arizona	Have you received treatment within the last five years for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently affects your ability to exercise the judgment and skills of a medical professional?	Y
	Delaware	Do you have a mental or physical disability that limits your ability to practice medicine in a fully competent and professional manner with safety to patients?	Y
	Illinois	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?	Y
	Iowa	Do you currently have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?	Y
	Massachusetts	Do you have a medical or physical condition that currently impairs your ability to practice medicine?	Y
	Nevada	Do you currently have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?	Y
	New Jersey	Do you have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?	Y
	Ohio	In the past five 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?	Y
	Tennessee	Do you currently have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?	Y
	Washington	Do you have a medical condition which in any way impairs or limits your ability to practice your profession with reasonable skill and safety?	Y
	Wisconsin	Do you have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?	Y
Hypothetical impairment	Alabama	Do you currently have any mental or physical condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or mental, emotional, or nervous disorder or condition) which in any way currently affects, or if untreated could affect, your ability to practice in a competent and professional manner?	N
	Arkansas	Do you currently have or have you ever had any physical or mental health condition, including alcohol or drug dependency, which, with or without accommodation, affects or is reasonably likely to affect your ability to practice medicine or to perform professional or medical staff duties appropriately?	N



Table 1 Continued

Type of Question	State	Question	Consistent with the Americans with Disabilities Act?
	California	Have you ever been diagnosed with an emotional, mental, or behavioral disorder that may impair your ability to practice medicine safely?	N
	Colorado	In the last five years, have you been diagnosed with or treated for a condition that significantly disturbs your cognition, behavior, or motor function, and that may impair your ability to practice as a physician safely and competently including but not limited to bipolar disorder, severe major depression, schizophrenia or other major psychotic disorder, a neurological illness, or sleep disorder?	N
	District of Columbia	Do you have a medical condition or have you become aware of any medical condition that currently impairs or limits your ability to practice medicine safely or that could affect your performance or impact your ability to practice your profession? Are you currently being treated, or within the past five years have you been treated, for a physical or mental condition that, but for the treatment, could impair your ability to practice your profession?	N
	Idaho	Have you had any current or past mental or physical condition or any current or previous physical or mental illness which may impact your ability to practice medicine with reasonable skill and safety?	N
	Indiana	Do you have any condition or impairment (including a history of alcohol or substance abuse) that currently interferes, or if left untreated may interfere, with your ability to practice medicine in a competent and professional manner?	N
	Kansas	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?	N
	Kentucky	Do you currently, or have you had within the past five years, any physical, mental, or emotional condition which impaired, or might reasonably impair, your ability to practice your health care profession safely and competently?	N
	Louisiana	In the five years prior to this application have you had any physical injury or disease or mental illness or impairment which could reasonably be expected to affect your ability to practice medicine or other health profession?	N
	Maryland	Do you have any physical or mental condition that currently impairs your ability to practice medicine or that would cause reasonable questions to be raised about your physical, mental, or professional competency?	N
	Minnesota	Have you within the past five years been advised by your treating physician that you have a mental, physical, or emotional condition, which, if untreated, would be likely to impair your ability to practice medicine with reasonable skill and safety?	N
	Montana	Have you any physical or mental condition(s) which may have or has adversely affected your ability to practice this profession, including but not limited to a contagious or infectious disease involving risk to the public?	N
	New Hampshire	Have you ever had any physical, emotional, or mental illness which has impaired or would be likely to impair your ability to practice medicine?	N
	New Mexico	In the five years prior to this application, have you had any physical injury or disease, or mental illness or impairment, which you are currently under treatment for or could reasonably be expected to affect your ongoing ability to practice medicine safely and competently?	N



## Medical Licensure Questions About Illness

**Table 1** Continued

Type of Question	State	Question	Consistent with the Americans with Disabilities Act?
Past impairment	North Carolina	In the past five years, have you had, or have you been told you had, a mental health or physical condition (not referenced above) which in any way limits or impairs or, if untreated, could limit or impair your ability to practice medicine in a competent or professional manner?	N
	Oklahoma	Do you currently have or have you had within the past two years any mental or physical disorder or condition which, if untreated, could affect your ability to practice competently?	N
	South Carolina	Are you currently being treated for any physical, mental or emotional condition that might interfere with your ability to competently and safely perform the essential functions of practice as a physician? Do you currently have any mental illness (e.g. bipolar disorder, schizophrenia, paranoia or any other psychotic disorder) or any physical illness or condition that might interfere with your ability to competently and safely perform the essential functions of practice?	N
	South Dakota	Do you have a physical, mental, or emotional condition which may adversely affect your practice?	N
	Vermont	Do you have a medical condition that in any way impairs or potentially impairs or limits your ability to practice medicine in your field of practice with reasonable skill and safety?	N
	Virginia	Do you have a physical disease, mental disorder, or any condition, which could affect your performance of professional duties?	N
	Wyoming	Do you have any medical condition which, in any way, impairs or limits, or might impair or limit, your ability to safely and skillfully practice medicine?	N
	Alaska	Has your ability to practice medicine in a competent and safe manner ever been impaired or limited by any condition, behavior, impairment, or limitation of a physical, mental, or emotional nature? Since completing your postgraduate training, have you ever been physically or mentally unable to practice medicine for a period of 60 days or longer? Have you ever been diagnosed with, treated for, or do you currently have: bipolar disorder, depressive neurosis, kleptomania, hypomania, any dissociative disorder, pyromania, schizophrenia, any psychotic disorder, delirium, depression, any organic mental disorder, paranoia, seasonal affective, or any condition requiring chronic medical or behavioral treatment?	N
	Florida	During the last five years, have you been treated for or had a recurrence of a diagnosed mental disorder that has impaired your ability to practice medicine within the past five years?	N
	Georgia	During the last seven years, have you suffered from any physical, psychiatric, or substance use disorder that could impair or require limitations on your functioning as a professional or has resulted in the inability to practice medicine for more than 30 days, or required court-ordered treatment or hospitalization?	N
	Maine	Do you have a mental or physical condition that currently impairs your ability to safely and competently practice medicine? Within the last five years have you been diagnosed with or treated for any medical or mental health disorder that impaired your behavior, judgment, understanding, or ability to function in school, work or other important life activities?	N
	Mississippi	Have you ever been diagnosed as having, or have you ever been treated for, pedophilia, exhibitionism or voyeurism, bipolar disorder, sexual disorder, schizophrenia, paranoia or other psychiatric disorder?	N

Table 1 Continued

Type of Question	State	Question	Consistent with the Americans with Disabilities Act?
Hospitalization, commitment, incompetence determination	Missouri	Have you in the last ten years or since the age of 18 been treated for or hospitalized for bipolar disorder, schizophrenia, paranoia or any other psychotic disorder?	N
	Montana	Have you ever been diagnosed with a physical condition or mental health disorder involving potential health risk to the public?	N
	Nebraska	Do you currently, or have you ever had, any physical, mental, or emotional condition which impaired, or does impair your ability to practice your health care profession safely and competently?	N
	New Hampshire	Have you ever had any physical, emotional, or mental illness which has impaired or would be likely to impair your ability to practice medicine?	N
	North Dakota	Within the past five years have you had or have you been admitted to any hospital or other inpatient care facility for any physical, mental, or emotional condition which impaired or does impair your ability to practice medicine safely and competently?	N
	Oregon	Do you currently have, or have you had within the past five years, any physical, mental, or emotional condition which impaired or does impair your ability to practice your health care profession safely and competently? Within the past five years, have you been admitted to any hospital or other treatment facility for any physical, mental, or emotional condition or substance use disorder which impaired or does impair your ability to practice your health care profession safely and competently?	N
	South Dakota	Have you been treated for or do you have a diagnosis for any mental health condition?	N
	Texas	Within the past five years, have you been diagnosed with or treated for any psychotic disorder, delusional disorder, mood disorder, major depression, personality disorder, or any other mental condition which impaired or does impair your behavior, judgment, or ability to function in school or work?	N
	Utah	Have you ever been declared by any court to be incompetent by reason of mental defect or disease and not restored?	N
	Wyoming	Within the past five years have you been hospitalized for, missed work because of, or been significantly impaired by any mental or emotional condition?	N
	Alaska	Have you ever been voluntarily or involuntarily committed or confined to any facility for mental health care? Have you ever been adjudicated, or declared incompetent, or been the subject of an incompetency proceeding?	N
	Florida	In the last five years, have you been admitted or referred to a hospital, facility or impaired practitioner program for treatment of a diagnosed mental disorder or impairment?	N
	Georgia	During the last seven years, have you suffered from any physical, psychiatric, or substance use disorder that could impair or require limitations on your functioning as a professional or has resulted in the inability to practice medicine for more than 30 days, or required court-ordered treatment or hospitalization?	N
	Kentucky	Within the past five years, have you been admitted to any hospital or other in-patient care facility for any physical, mental or emotional condition, which impaired, or might reasonably be considered to impair, your ability to practice your health care profession safely and competently?	N

## Medical Licensure Questions About Illness

**Table 1** Continued

Type of Question	State	Question	Consistent with the Americans with Disabilities Act?
Diagnosis	Missouri	Have you in the last ten years or since the age of 18 been treated for or hospitalized for bipolar disorder, schizophrenia, paranoia or any other psychotic disorder?	N
	North Dakota	Within the past five years have you had or have you been admitted to any hospital or other inpatient care facility for any physical, mental, or emotional condition which impaired or does impair your ability to practice medicine safely and competently?	N
	Oregon	Within the past five years, have you been admitted to any hospital or other treatment facility for any physical, mental, or emotional condition or substance use disorder which impaired or does impair your ability to practice your health care profession safely and competently?	N
	Utah	Have you ever been declared by any court to be incompetent by reason of mental defect or disease and not restored?	N
	Wyoming	Within the past five years have you been hospitalized for, missed work because of, or been significantly impaired by any mental or emotional condition?	N
	Alabama	Within the past two years, have you been diagnosed with or have you been treated for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder?	N
	Alaska	Have you ever been diagnosed with, treated for, or do you currently have: bipolar disorder, depressive neurosis, kleptomania, hypomania, any dissociative disorder, pyromania, schizophrenia, any psychotic disorder, delirium, depression, any organic mental disorder, paranoia, seasonal affective, any condition requiring chronic medical or behavioral treatment?	N
	Colorado	In the last five years, have you been diagnosed with or treated for a condition that significantly disturbs your cognition, behavior, or motor function, and that may impair your ability to practice as a physician safely and competently, including but not limited to bipolar disorder, severe major depression, schizophrenia or other major psychotic disorder, a neurological illness, or sleep disorder?	N
	Mississippi	Have you ever been diagnosed as having, or have you ever been treated for, pedophilia, exhibitionism or voyeurism, bipolar disorder, sexual disorder, schizophrenia, paranoia or other psychiatric disorder?	N
	Missouri	Have you in the last ten years or since the age of 18 been treated for or hospitalized for bipolar disorder, schizophrenia, paranoia or any other psychotic disorder?	N
	Montana	Have you ever been diagnosed with a physical condition or mental health disorder involving potential health risk to the public?	N
	South Carolina	Do you currently have any mental illness (e.g., bipolar disorder, schizophrenia, paranoia or any other psychotic disorder) or any physical illness or condition that might interfere with your ability to competently and safely perform the essential functions of practice?	N
	South Dakota	Have you been treated for or do you have a diagnosis for any mental health condition?	N
	Texas	Within the past five years, have you been diagnosed with or treated for any psychotic disorder, delusional disorder, mood disorder, major depression, personality disorder, or any other mental condition which impaired or does impair your behavior, judgment, or ability to function in school or work?	N

Notes: States that have more than one question about mental illness may appear in more than one of the categories of questions. Only the relevant question is listed for each type of question.

practice medicine in the licensing bodies with such applications.

This is important because of the substantial prevalence of mental illness among medical students and physicians and the impact of stigma against them, as reviewed in this article. This stigma deters many physicians from seeking treatment, and it is further manifested in the medical licensing process, which in turn further deters physicians from seeking treatment because of their concern over medical licensure questions. This leads to needless suffering, loss of productivity, and even suicide. It could also adversely affect the patients of untreated physicians.

This practice continues, despite both the APA and AMA asking medical licensure boards not to ask licensure applicants about a history of mental illness. The findings from this article's investigation demonstrated that the questions asked by many licensing boards are inconsistent with ADA standards. Notwithstanding the views of the APA and AMA, the FSMB has unfortunately not adopted similar acceptable model questions akin to those promulgated by the NCBE. If medical licensing bodies would follow the lead of law licensing bodies, applicants would be protected from ADA violations and the deterrent effects of questions that can cause them so many adverse effects.

There is evidence that positive changes in medical licensing board questions may be starting to follow in the wake of the Louisiana Settlement Agreement. Ohio has substantially reformed its questions. Formerly, Ohio asked:

Within the last ten years, have you been diagnosed with or have you been treated for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder? Have you, since attaining the age of eighteen or within the last ten years, whichever period is shorter, been admitted to a hospital or other facility for the treatment of bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder? Do you have, or have you been diagnosed as having, a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?

The prior Ohio question transgressed the ADA in multiple ways. Now, Ohio asks, "In the past five 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?" This language is almost identical to that of the licensure questions of Delaware, Illinois, New Jersey, Washington and Wisconsin. None of their pertinent

questions contain the word "current" or "currently"; all are stated in the present tense and are thus construed as current impairment questions. Given this history, the wording of the new Ohio question, and the background of the reform of the Ohio licensure questions that gave rise to its new version, Ohio manifestly now is a current medical licensure body whose impairment question accords with the ADA.

Our investigation found that, although 18 medical licensing bodies in the United States currently do not transgress ADA standards either because they ask no mental health questions at all or they limit their questions to current impairment by mental illness, the remainder ask a variety of questions that are likely to be invalidated by the ADA. **Our evaluation of the questions of all states and the District of Columbia provides applicants a basis for deciding to which states to apply or to prosecute for an ADA violation.**

This investigation was limited to initial licensure application questions, and it does not address the related concerns about requirements of many licensing bodies for residency training directors to include information about any psychiatric history of applicants in reference letters. We would argue that, by extension, this practice also should be governed by the ADA requirements we consider here, notwithstanding one early and poorly reasoned judicial decision arguably to the contrary.<sup>56</sup>

**We predict that the seminal Louisiana Settlement Agreement and judicial decisions that have defined what professional licensure questions are acceptable will ultimately compel other medical licensing bodies to conform to ADA standards and change their questions accordingly as Ohio has done.** We note that the DOJ's new leadership may be less inclined to aggressively prosecute licensing bodies with questions that are unlikely to meet the ADA standards, but bodies like the **Bazelon Center for Mental Health Law or the ACLU will continue to act to enforce the ADA.** Additionally, there are many dedicated career public servants at the DOJ who may continue to enforce the ADA regardless of the identity of the current Attorney General or other political leaders of the DOJ. Medical licensing bodies have the power to render this result unnecessary by adopting acceptable mental health licensure questions on their own accord.



## Conclusion

A substantial number of medical students and physicians live with some form of mental illness. Over the years, many medical licensure boards have asked applicants intrusive questions about whether they have any psychiatric history. This has created a major problem for applicants, and unfortunately this has discouraged many of those who need psychiatric treatment from seeking it because of fear of the questions. Gradually, court decisions, in many cases involving attorneys challenging questions asked by bar licensure bodies, and actions by the DOJ have established that such questions violate the ADA and thus are unlawful. The 2014 Louisiana Settlement Agreement set definite limits on mental health licensure questions. Following this settlement, and in accordance with the views of the AMA and APA, Ohio, a state whose medical licensure board previously asked about mental health in ways that were not consistent with the ADA, has already replaced its questions with ones that are consistent with ADA standards. Although a majority of medical licensure boards continue to ask questions that are likely to be invalidated by the ADA, recent judicial and DOJ developments may lead them to abandon these questions without the need for legal action. If not, legal action to enforce ADA compliance over the coming years will substantially benefit both MD licensure applicants and their patients.

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