AMERICAN PSYCHOLOGICAL ASSOCIATION

APA RESOLUTION to Oppose Mental Health Screening Questions on Character and Fitness Examinations for Licensure to Practice Law

AUGUST 2023

WHEREAS ADMISSION to the practice of law involves an evaluation of substantive knowledge, tested through the administration of the bar examination and a separate evaluation of character and fitness;

WHEREAS, the purpose of such questions is "to identify issues that could affect the responsible and competent practice of law … [and] information [that] could bear a relationship to the applicant's ability to practice law in a competent manner" American Bar Association (2020);

WHEREAS thirty-seven states and D.C. include one or more questions on their character and fitness questionnaire referencing the mental health status of applicants (ABA, 2023), which can include a statement that it is the applicant's responsibility to "check with your treating health care professional" regarding diagnoses (e.g., in Kentucky);

WHEREAS these questions can require disclosure of (some examples below):

- **Diagnoses** ("In the past 10 years, have you been diagnosed with, been treated or sought counseling for bi-polar disorder, schizophrenia, paranoia, or any other psychiatric disorder, or have you ever been committed to any institution for the treatment of any such condition?" (e.g., in Nevada))
- **Current conditions** (Whether an applicant has "a current condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which affects your conduct that has not been or is not currently being treated effectively or for which the treatment is unstable" (e.g., in Utah))
- **Treatment** (Whether an applicant has sought treatment in the past five years for their "conduct or behavior" (e.g., in Virginia))
- Participation "in a monitoring or support program" (e.g., in Rhode Island, South Carolina)
- Whether the applicant has ever "since the age of 18… been declared legally incompetent, been placed under conservatorship or guardianship, been involuntarily hospitalized, or been placed under an involuntary hold" (e.g., in Minnesota)
- Whether the applicants "functioning at school or at work [has] ever been sufficiently impaired (as the result of substance abuse, alcohol abuse, or a mental, emotional, or nervous or behavior disorder or condition) as to require inpatient or outpatient treatment" (e.g., in Georgia);

WHEREAS research finds that a significant number of law students have struggled or currently struggle with mental health issues during law school (ABA, 2020); including that more than one in six screened positive for depression and nearly one in four for anxiety (Organ et al., 2016);

WHEREAS the Bazelon Center for Mental Health Law investigated character and fitness questions in all 50 states and found that a number of states ask questions:

- "that are not limited in time or scope or seek applicant responses that appear overbroad with respect to the period of time sought and are not directed at an applicant's ability to practice law";
- "related to an applicant's diagnosis, rather than to the applicant's conduct or behavior" despite resolutions adopted in opposition of such information"; and
- "that can result in requiring disclosure of significant personal health care information, medications, and diagnostic notes, which are not only invasive but may come at a burdensome cost to the applicant";

WHEREAS "bar examiners — lay people with no training in psychology or psychiatry — then make an evaluation as to whether the student's mental health precludes her bar admission" (Dragnich, 2015);

WHEREAS, in response to these questions, a survey of 3,300 law students found "overwhelming evidence of student concerns about the risks to bar admission if they disclose substance use or mental health issues after seeking treatment and support" (Organ et al., 2016) such that:

- "42% of law school student respondents indicated they felt they needed mental health intervention, but 45% would not seek help, believing it would threaten their ability to be admitted to the bar.

- 63% of respondents reported that the potential threat to bar admissions was a factor discouraging them from seeking services for substance use.
- Almost half of the respondents reported their belief that they had a better chance of getting admitted to the bar if a substance use problem were hidden, and
- 44% of respondents reported their belief that they had a better chance of getting admitted to the bar if a mental health problem were hidden";

WHEREAS a nationwide study of about 13,000 lawyers found that 28% of lawyers reported depression, 19% reported anxiety, and that the 8.5% of lawyers in the sample reported suicidal ideation, twice as high as the general working population average (Krill et al., 2023);

WHEREAS "Under the Americans with Disabilities Act (ADA), questions about a bar applicant's mental health are only permitted if those questions are "necessary" to protect the public from unfit attorneys, and bar examiners bear the burden of proving this necessity" (Dragnich, 2015);

WHEREAS the U.S. Department of Justice has stated that such questions tend "to screen out individuals with disabilities based on stereotypes and assumptions about their disabilities and are not necessary to assess the applicants' fitness to practice law" and recommended removal of applicant questions about diagnoses;

WHEREAS statistical data reveal that there is no connection between bar application questions about mental health and attorney misconduct and that such questions have not been empirically shown to work as a successful screening tool for who can and cannot practice law in a competent manner (Dragnich, 2015);

WHEREAS ABA Resolution 105, adopted in 2018, recommended enactment of a number of well-being recommendations including to "Re-Evaluate Bar Application Inquiries About Mental Health History";

WHEREAS at least six states have adopted significant changes to their questions about mental health since 2018;

BE IT RESOLVED, that APA oppose the use of such mental health questions (specifically questions about diagnoses and treatment history) on character and fitness examinations;

BE IT RESOLVED, that APA work alongside the American Bar Association (ABA) and state bar authorities to advocate for removal of remaining questions about diagnoses and treatment history;

BE IT RESOLVED, that APA encourage law schools to support law students seeking appropriate mental health treatment and reduce the stigma associated with mental health;

BE IT RESOLVED that the APA issue a public statement consistent with the data, information, and above objectives in this Resolution.

REFERENCES

American Bar Association (2018, February). ABA Resolution 105: Lawyer Well-Being Resolution. *ABA Working Group To Advance Well-Being In The Legal Profession - Commission On Lawyer Assistance Programs Standing Committee On Professionalism National Organization Of Bar Counsel - Report To The House Of Delegates.* (https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_2018_hod_midyear_105.pdf.

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