

## Statement of Position on Mental Health Questions for Bar Admission

Applicants to the bar in every jurisdiction in the United States and Canada must meet educational requirements and pass a bar examination before admission to the practice of law. They must also provide evidence of good moral character.<sup>1</sup> The ABA Model Code of Professional Responsibility published in 1970 stated that, in addition to educational or moral deficiency, applicants might also be deemed unqualified for admission based on *mental or emotional instability*.<sup>2</sup> Mental health questions for bar applicants that sought to identify such bases for disqualification became widespread by the 1990s.<sup>3</sup>

Mental health questions that seek information about the existence of an applicant's mental health diagnosis or the applicant's current or past mental health treatment reflect a false linkage between mental health conditions and the competent practice of law. In fact, questions about mental health are not an effective means to identify persons who are and are not able to practice law in a competent manner.<sup>4</sup> Questions that seek such information risk creating an incentive for persons with such conditions to avoid treatment by causing them to experience feelings of stigma and shame. Underrepresented groups, including racialized people, ethnic minorities and members of the LGBTIQ+ community, may experience these harms most severely.

The American College of Trial Lawyers ("College") supports the requirement that applicants to the bar should demonstrate good moral character before admission. But the College opposes bar examiners' questions that require

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<sup>1</sup> Marcus Ratcliff, *The Good Character Requirement: A Proposal for a Uniform National Standard*, 36 TULSA L.J. 487, 493 (2000).

<sup>2</sup> MODEL CODE OF PROF. RESP. EC 1-6 (AM. BAR ASS'N 1980) (emphasis added).

<sup>3</sup> Jon Bauer, *The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act*, 49 UCLA L. REV. 93, 96 n.5 (2001).

<sup>4</sup> A. Dragnich, *Have You Ever: How State Bar Association Inquiries into Mental Health Violate the Americans with Disabilities Act*. Brook. L. Rev., 80, 677 (2014).

disclosure about mental health diagnosis or treatment untethered to conduct or behavior that the bar examiner would otherwise find worthy of concern. The College opposes the use of past or current diagnosis or treatment of a mental health condition as a matter of concern for bar admission in the absence of evidence that the applicant's condition has resulted in conduct or behavior that would give concern for bar admission if engaged in by a person without a mental health condition.

The College recommends that bar examiners should not require applicants to disclose a diagnosis or treatment of a mental health condition unless the applicant discloses the diagnosis or treatment to explain conduct or behavior that might otherwise warrant denial of admission, or the bar examiner learns from a third party that the applicant has raised a mental health diagnosis or treatment as an explanation for conduct or behavior that might otherwise warrant denial of admission.<sup>5</sup>

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<sup>5</sup> Press Release, U.S. Dep't of Just. C.R. Div., Settlement Agreement between the United States of America and The Louisiana Supreme Court Under The Americans With Disabilities Act (Aug. 15, 2014), *cited in* Colin Black, *The Rise and Fall of the Mental Health Inquiry for Bar Admission*, 50 *Cap. U. L. Rev.* 537, 557 n.169 (2022).