

A National Analysis of Medical Licensure Applications

Sarah J. Polfliet, MD

The 1990 enactment of the Americans With Disabilities Act (ADA) and subsequent case law have established that medical board screening of physician licensure applicants for histories of mental illness or substance use may constitute discrimination. This study examines how physician licensure questionnaires have evolved since the enactment of the ADA. Specifically, we requested medical licensure applications in 2006 from all U.S. affiliated medical licensing boards ($n = 54$) and analyzed their mental health and substance use inquiries comparatively with application data from 1993, 1996, and 1998. Response rates were 96 percent ($n = 52$) for initial registration applications and 93 percent ($n = 50$) for renewal applications. Our results indicate that applicants in 2006, compared with applicants in the 1990s, were questioned more about past, rather than current, histories of mental illness and substance use. These findings revealed medical board practices that seem to run counter to existing court interpretations of the ADA as well as licensure guidelines established by several professional organizations.

J Am Acad Psychiatry Law 36:369–74, 2008

State medical boards have obligations both to protect the public from providers who may be impaired by illness and to protect the rights of the physicians applying for licensure. Since the enactment of the Americans With Disabilities Act (ADA) in 1990, state medical boards have struggled with limitations on their ability to inquire about the physical and psychological fitness of medical licensure applicants. No longer are state medical boards permitted to ask questions such as, “Are you now, or have you ever been, diagnosed with or treated for mental illness?” The typical questions of the 1980s are now prohibited under the ADA, in that broad inquiries about history of illness can amount to an unacceptable screening of individuals based on diagnosis and, thereby, unfairly subject such applicants to more intensive evaluations than others.¹ The Department of Justice, which is responsible for the administration of the ADA, has clearly declared that state medical boards lack evidence to support the necessity of such broad questions, as they do not capture the conduct or behavior that would impair a physician’s current ability to practice competently.² It has been argued that inquiries based on a history of mental illness or substance use, rather than on impairment,

are similar to discrimination based on race or gender, and permit false generalizations about a person’s functional level based on a diagnosis.¹

After passage of the ADA, professional organizations proposed guidelines for state licensing boards to comply with the Act by narrowing mental health inquiries to minimize physician disclosure, yet optimize protection of the public. A work group of the American Psychiatric Association (APA) stated that “[s]uch disclosure stigmatizes individuals who seek consultation and treatment, equates help seeking behavior with the existence of problems sufficient to cause impairment, singles out psychiatric treatment for discriminatory attention, and exposes those who report treatment to breaches of confidentiality.”³ In March 1997, the APA Council on Psychiatry and the Law offered three guidelines for mental health inquiries on licensure applications: first, it is not appropriate to inquire about psychiatric history unless it is in the context of understanding current functioning; second, only information about current impairments affecting the capacity to function as a competent physician should be disclosed; and finally, applicants must be informed of the potential for public disclosure of any information they provide on applications.^{3,4} Similar to the APA guidelines, the American Bar Association (ABA) has issued recommendations to state bar examiners for narrowing mental health inquiries on applications for the bar.⁵

Dr. Polfliet is a former Forensic Fellow in the Psychiatry and the Law Program, University of California, San Francisco, CA. Address correspondence to: Sarah J. Polfliet, MD, 912 Cole Street #381, San Francisco, CA 94117. E-mail: polflietmd@sbcglobal.net

The concerns raised by the ADA regarding licensing led to litigation in both the medical and the legal professions. The first case that addressed medical licensure application inquiries arose in 1993, when the Medical Society of New Jersey accused the New Jersey Boards of Medical Examiners of asking questions that violated Title II of the ADA.⁶ Title II provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”⁷ The Department of Justice filed an *amicus curiae* brief during the course of litigation that supported the position of the Medical Society and faulted the Board for seeking information about a candidate’s status as a person with a disability instead of focusing on any behavioral manifestations of disabilities that might impair the ability to practice medicine.⁶ The court advised the board to replace the broadly structured questions with inquiries that focus on the applicant’s behavior and his or her ability to practice medicine competently. The proceedings of *Medical Society of New Jersey v. Jacobs*⁶ set a precedent for what would be considered “safe” questioning by state licensing boards, including replacing the “have you ever” language with the use of temporal windows (“in the past five years . . .”), providing clear definitions of the “ability to practice,” and focusing on functional impairment rather than on diagnosis or treatment.⁶

Since the New Jersey case, several federal district courts have ruled on mental health inquiries by state licensing boards. Although many cases involved questions on state bar applications, the common issue with medical licensure was the balance of an applicant’s right to privacy with the protection of the public. In *Clark v. Virginia Bd. of Bar Examiners* the court found a question reading, “Have you, within the past five years, been treated or counseled for any mental, emotional or nervous disorders?” to be overly broad, unproven in its necessity, and potentially discriminatory.⁸ The court concurred with the precedent of *Medical Society of New Jersey v. Jacobs* that only questions concerning an applicant’s conduct are permissible in assessing the applicant’s current level of competence. In addition, the court for *Clark v. Virginia Bd. of Bar Examiners* held that even if open-ended questions are limited in time (i.e., within the past five years), that there was no evidence of a cor-

relation between past psychiatric treatment and current functional impairment.⁸

A more recent case addressing the implications of the ADA on medical licensure was that of *Hason v. Medical Board of California*.⁹ In March of 1995, Dr. Michael Hason’s application for a medical license in the state of California was denied on the basis of mental illness, *per se*, rather than on actual functional impairment. Hason filed a complaint against the Medical Board of California alleging violations of his constitutional rights and Title II of the ADA. In 2002, the Ninth Circuit Court of Appeals ruled that the court’s interpretation of the ADA should be broad enough to prevent discrimination of disabled persons and, although medicine is a public service not equivalent to employment, it should still be protected under the ADA.⁹

Medical licensure was created to protect the public, a duty and responsibility delegated to the state medical boards. The role of the ADA in medical licensure is not to deny the state boards the necessary information to assess a physician’s fitness and competency to practice.² Rather, the ADA was designed to protect individuals from discrimination based solely on an illness and not on behavior or impairments. The Federation of State Medical Boards (FSMB) has recommended that the phrasing of the ADA be amended to recognize the challenges of medical licensing boards and have advised that licensure inquiries be presumed to protect the public, unless the questions are so broad that they fail to identify functional impairment.¹⁰

Over the past decade, researchers have examined questions about mental health and substance use on medical licensure applications. Hansen *et al.*¹¹ compared medical licensure applications (osteopathic applications included) between 1993 and 1996 and found that the proportion of state medical boards asking about functional impairments due to mental illness increased from 33 percent (in 1993) to 75 percent (in 1996). Sansone *et al.*¹² summarized and characterized questions on initial medical licensure applications in 1998 and found that although 39 percent of medical licensing boards were asking about current functional impairment, 22 percent continued to use “Have you ever . . .” phrasing in questions on mental illness or substance use. Despite court interpretations of the ADA and guidelines from professional organizations, some of the questions on licensure applications in 1998 continued to

be broad and potentially discriminatory. The purpose of our study is to examine the current practices of how U.S. affiliated medical licensing boards query applicants about mental health and substance use and analyze the results comparatively with application data from the 1990s.

Methods

Initial and renewal medical licensure applications were requested from the state medical boards of the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. In the event that the application was not available on the state medical board's Web site, an e-mail or telephone request was made stating that the purpose of the study was to examine the questions on mental health and substance use on both the initial and renewal medical licensure applications. Data were collected over a 3-month period during the winter of 2006–2007. Two licensing boards (Kansas and Puerto Rico) did not respond to multiple requests or refused to provide initial licensure application, and four licensing boards (Idaho, New Jersey, New York, and Puerto Rico) refused to release the renewal licensure applications.

Each application was examined for questions pertaining to mental health or substance use. The questions were categorized based on: time qualifiers (current, past year, past 2 years, past 5 years, past 7–10 years, or ever), impairment qualifiers (functional impairment, treatment, or hospitalization), and application type (initial versus renewal). In the event that there were multiple inquiries on an application, the most broad time qualifier was coded (i.e., longest period). When an application did not contain questions on mental health or substance use, temporal and impairment qualifiers were coded as “no” for purposes of data analysis.

To determine whether mental health and substance abuse inquiries have changed over time, the results of the present survey were compared with previous studies of medical license applications in 1993 and 1996¹¹ and 1998.¹²

Results

Initial Registration Applications

Of the 54 U.S. affiliated medical licensing boards, 52 (96%) initial registration applications and 50 (93%) renewal applications were received and ana-

lyzed. Seven licensing boards (13%) did not include any questions pertaining to mental health on the initial registration application. Four of these licensing boards (Connecticut, New York, Guam, and the Virgin Islands) also did not inquire about any history of or current substance use. Initial applications from three states (Indiana, Hawaii, and Michigan) inquired about substance use, but not mental health.

Of the 45 initial registration applications that had questions about mental health, it was most common ($n = 16$, 36%) for licensing boards to inquire if the applicant has ever had a history of functional impairment as a result of mental illness. One of the questions from the initial registration application for the Maine state medical board was typical: “Have you EVER suffered from any physical, psychiatric, or addictive disorder that would impair or require limitations on your functioning as a physician, or that resulted in the inability to practice medicine for more than 30 days?” Four of the initial applications (9%) that asked about mental illness did not inquire about functional impairment. A question by the Georgia state medical board was typical of the applications that asked about mental illness or substance use, but did not focus on functional impairment: “Have you ever been treated or hospitalized for mental illness, drug or alcohol abuse during the last 7 years?”

As shown in Table 1, compared with questions on the 1993 or 1998 licensure applications, the 2006 application questions have shifted from focusing on current functional impairment to asking if the applicant has ever experienced functional impairment due to mental illness. In addition, when compared with 1998, there has been a substantial increase in questions specifically asking if the applicant has any history of treatment (from 10% in 1998 to 56% in 2006) or hospitalization (from 2% in 1998 to 24% in 2006) for mental illness.

Somewhat more common than in 1998, seven states specifically asked if the applicant had a diagnosis of “bipolar disorder, schizophrenia, paranoia or other psychotic disorder” and nine states specifically asked if the applicant had ever been diagnosed with “pedophilia, exhibitionism, voyeurism, or other sexual disorder.”

Of the 52 initial applications analyzed, 47 (90%) mentioned substance use. As shown in Table 2, questions on substance use for licensure increased between 1993 and 1998, but have since remained unchanged. Of the 2006 applications that asked about

Analysis of Medical Licensure Applications

Table 1 Initial Registration Application Questions on Mental Health*

Year	1993† (N = 63)	1996† (N = 66)	1998‡ (N = 48)	2006 (N = 52)
Any questions	76 (48)	80 (53)	85 (41)	87 (45)
Functional impairment	42 (20)	75 (40)	83 (34)	91 (41)
Current functional impairment	—	—	39 (16)	18 (8)
Ever had history of functional impairment	—	—	22 (9)	36 (16)
Any history of treatment	—	—	10 (4)	56 (25)
Any history of hospitalization	—	—	2 (1)	24 (11)
Specific question on diagnoses of bipolar disorder or psychotic illness	—	—	12 (6)	16 (7)
Specific question on diagnoses of pedophilia/exhibitionism/voyeurism	—	—	16 (7)	20 (9)

Data are the percentage of the total group (*n*).

*Percentages may not add up to totals because of rounding.

†Hansen *et al.*¹¹

‡Sansone *et al.*¹²

substance use, it was most common for licensing boards to ask whether the applicant had experienced functional impairment due to substance use within the past five years ($n = 14$, 30%), or whether the applicant had ever ($n = 12$, 26%) experienced functional impairment due to substance use. One of the questions from the initial registration application for the Montana state medical board was typical: "Have you used alcohol or any other mood-altering substance which may have or has adversely affected your ability to practice this profession?" Similar to the application questions on mental health, state medical boards are more focused on if the applicant has ever experienced functional impairment, and less on current impairment. Also, when compared with 1998, there has been a substantial increase in questions specifically asking if the applicant has any history of treatment (from 12% in 1998 to 66% in 2006) or hospitalization (from 0% in 1996 to 17% in 2006) for substance use.

Renewal Licensure Applications

Of the 50 renewal licensure applications analyzed, 39 (78%) included questions about mental health and 40 (80%) about substance use. Of interest, four

(8%) of the licensing boards that had inquired about mental health or substance use on the initial licensure application did not question the applicant again upon licensure renewal. As shown in Table 3, there has been a significant increase in the number of questions on renewal applications about both mental illness and substance use since 1993, particularly addressing functional impairment in either category.

Discussion

The results of this study show several shifts between 1993 and 2006 in questions on medical licensure applications about mental illness and substance use. Over the past decade, the percentage of questions on mental illness and substance use has steadily risen. Similar increases have been seen among renewal applications, with nearly double the number of state medical boards asking about mental illness and substance use for licensure renewal in 2006, compared with renewal in 1996. Yet, some medical licensing boards continue to avoid asking any questions about mental illness or substance use, instead screening applicants through academic records.¹¹ While omitting questions about mental illness or

Table 2 Initial Registration Application Questions on Substance Use*

Year	1993† (N = 63)	1996† (N = 66)	1998‡ (N = 48)	2006 (N = 52)
Any questions	83 (52)	94 (62)	90 (43)	90 (47)
Asks about functional impairment	—	32 (20)	77 (33)	89 (42)
Current functional impairment	—	—	26 (11)	15 (7)
Ever had history of functional impairment	—	—	12 (5)	66 (31)
Any history of hospitalization	—	—	0 (0)	17 (8)

Data are the percentage of the total group (*n*).

*Percentages may not add up to totals because of rounding.

†Hansen *et al.*¹¹

‡Sansone *et al.*¹²

Table 3 Renewal Application Questions on Mental Health or Substance Use*†

Year	1993‡ (N = 54)	1996‡ (N = 64)	2006 (N = 50)
Any questions on mental illness	44 (25)	(30) 47	(39) 78
Any questions on substance use	43 (23)	(35) 55	(40) 80
Of those that ask about mental health or substance use, how many ask about:			
Functional impairment from mental illness	60 (15)	90 (27)	85 (33)
Functional impairment from substance use	—	44 (15)	85 (34)

Data are the percentage of the total group (n).

*Percentages may not add up to totals because of rounding.

†Renewal applications were not included in Sansone *et al.*¹²

‡Hansen *et al.*¹¹

substance use may avoid potential discrimination of physician applicants, this approach may be insufficient to fulfill a board's duty to protect the public.¹³

Some states specifically inquire if the applicant has ever had a diagnosis of, or been treated for, bipolar disorder, schizophrenia, paranoia, or other psychotic disorder or for pedophilia, exhibitionism, or voyeurism. Case law from New Jersey has determined that specific questions about bipolar, psychotic, or sexual disorders are acceptable based on a higher perceived potential of posing a direct threat to the public, and on the relapsing-remitting courses of these illnesses.⁶ While there may be additional social stigma attached to these diagnoses, the potential for future risk that an individual may pose to the public is no more certain than that of an individual with any potentially impairing illness. To date, there is no available research that determines the relative risk of each disorder compared with others. Until those data are obtained, separate screening questions for histories of bipolar, psychotic, or sexual disorders are potentially discriminatory.

Professional organizations and court interpretations of the ADA recommend that state medical boards focus on current functional impairment instead of any history of diagnoses or treatment of illness. Licensure applications in 2006 demonstrate that state medical board practices are only partially consistent with such recommendations. More states are inquiring about functional impairment from mental illness or substance use than ever before. However, fewer states are addressing current functional impairment by mental illness (from 39% in 1998 to 18% in 2006), while more states are asking if the applicant has ever experienced functional impairment (from 22% in 1998 to 36% in 2006). A similar, although somewhat less dramatic, pattern is seen in questions on functional impairment from substance use. This inverse relationship between more ques-

tions on past, rather than current, functional impairment, is intriguing. Such broad questions about an applicant's history may conflict with case law interpretations of the ADA. The Federation of State Medical Boards advises that unless clear temporal relationships are established with sufficient evidence, a history of mental illness or substance use does not reliably predict future risk to the public and, therefore, can be omitted.¹⁰

The results of this study also show that despite current recommendations, there has been a paradoxical increase in licensure questions about an applicant's history of treatment or hospitalization for mental illness or substance use. Professional organizations and the courts have asserted that an applicant's history of treatment or hospitalization for any illness is not an accurate prediction of current ability to function as a competent physician.^{4,8} Until it can be determined that treatment or hospitalization for mental conditions predicts current or future functional impairment, many questions on the applications for 2006 are potentially as discriminatory as those on applications of the 1980s.¹³

This review of 2006 medical licensure applications also reveals that state medical boards continue to differ considerably in how applicants should be questioned about mental illness or substance use. Compliance of state medical boards with recommendations and guidelines intended to minimize discrimination is nonuniform. Some of the questions on current licensure applications are just as broad, and potentially discriminatory, as they were before enactment of the ADA.

Acknowledgments

The author acknowledges her indebtedness to Renée L. Binder, MD, and Dale McNiel, PhD, Psychiatry and the Law Program, University of California, San Francisco, and to Jason Bermak, MD,

Analysis of Medical Licensure Applications

PhD, for critical review and comments. Much appreciation is also owed to Kevin Delucchi, PhD, Department of Psychiatry, University of California, San Francisco, for assistance with data analysis. Special thanks to authors Thomas E. Hansen, MD, and Randy A. Sansone, MD, for providing application information data from studies in 1993, 1996, and 1998.

References

1. Alikhan M: The ADA is narrowing mental health inquiries on bar applications: looking to the medical profession to decide where to go from here. *Georgetown J Legal Ethics* 14:159–77, 2001
2. Walker Y: Protecting the public: the impact of the Americans With Disabilities Act on licensure considerations involving mentally impaired medical and legal professionals. *J Legal Med* 25: 441–68, 2004
3. Work Group on Disclosure: Recommended guidelines concerning disclosure and confidentiality. Washington, DC: American Psychiatric Association, December 1997
4. Council on Psychiatry and the Law: Discrimination against persons with previous psychiatric treatment: position statement. Washington, DC: American Psychiatric Association, APA Document Reference No. 970002, March 1997
5. American Bar Association: Section of Human Rights and Individual Responsibilities. *Human Rights* 24:1, Winter 1997
6. *Medical Society of New Jersey v. Jacobs*, 1993 WL 413016 (D.N.J. 1993)
7. ADA, 42 U.S.C. § 12132 (Title II) (1994)
8. *Clark v. Virginia Bd. of Bar Examiners*, 880 F.Supp. 430, 440 (E.D. Va. 1995)
9. *Hason v. Medical Bd. of California*, 279 F.3d 1167 (9th Cir. 2002)
10. Federation of State Medical Boards: Americans With Disabilities Act of 1990. License Application Questions: A Handbook for Medical Boards. Dallas, TX: Federation of State Medical Boards of the United States, Inc., 2006
11. Hansen TE, Goetz RR, Bloom JD, *et al*: Changes in questions about psychiatric illness asked on medical licensure applications between 1993 and 1996. *Psychiatr Serv* 49:202–6, 1998
12. Sansone R, Wiederman MW, Sansone LA: Physician mental health and substance abuse: what are state medical licensure applications asking? *Arch Fam Med* 8:448–51, 1999
13. Testimony by Ray Q. Bumgarner, JD, on behalf of the Federation of State Medical Boards of the United States, before the Committee on the Judiciary, Subcommittee on the Constitution, United States House of Representatives, May 22, 1997