

Bar Examiners Screening for Mental Illness Violates the ADA

Washington – June 20, 2013 – Mental health experts, mental health organizations, lawyers with mental health conditions, and disability rights practitioners are calling on the nation’s boards of bar examiners to comply with the Americans with Disabilities Act (ADA) when assessing applicants for admission to the bar.

In a letter to *The Bar Examiner*, the authors take issue with a discriminatory approach proposed by Michael Herkov (March 2013 issue) that targets applicants with diagnosed mental illness, even when their academic record, bar examination scores, and conduct are exemplary.

“Dr. Herkov’s shocking model and justifications for singling out people with mental disabilities are based on unfounded fears and stereotypes. The Americans with Disabilities Act prohibits the bar from inquiring into an applicant’s mental health condition, especially when the applicant’s past conduct and performance have met high standards,” stated Jennifer Mathis, director of programs at the Judge David L. Bazelon Center for Mental Health Law.

“People with disabilities, including mental health diagnoses, must be assessed based on their abilities, not their medical conditions,” stated Samuel Bagenstos, a University of Michigan law professor and disability law expert. “That is the law, plain and simple. As the gatekeepers to the legal profession, boards of bar examiners should know the law and act accordingly.”

“Bar examiners’ questions about an applicant’s mental health history can turn well-qualified, aspiring attorneys away from the field. They also deter students from seeking treatment for fear of being excluded from the bar,” stated Robert Dinerstein, an associate dean and director of the disability law clinic at American University’s Washington College of Law. “Neither of these outcomes helps the profession or the public.”

“Attorneys and other professionals with mental health conditions can and do lead inspiring careers and lives,” stated Joseph de Raismes, general counsel of Mental Health America. “There is no evidence that bar examiners or professionals can predict success on the basis of an individual’s diagnosis.”

“Bar examiners would best serve the goal of protecting the public and preserving the integrity of the profession by asking about individuals’ behaviors and conduct and not their diagnosis or treatment,” stated Jeffrey Swanson, a Duke University psychiatry professor and researcher in mental health policy and law.