



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

Dear Senator Wyden:

This responds to your letter, dated February 23, 2023, to the Attorney General, Assistant Attorney General Kristen Clark, and the Disability Rights Section Chief regarding state medical boards' compliance with the Americans with Disabilities Act (ADA), specifically regarding medical licensing inquiries related to an applicant's mental health history. We are sending identical responses to the other Members who joined your letter.

We appreciate the concerns you have raised regarding the challenges that people with disabilities may face in obtaining medical licensure. The Department of Justice (Department) is committed to ensuring fairness in the professional licensing process. Non-discrimination in professional licensing is key to realizing an animating principle of the ADA, as set out by Congress, that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity . . . and economic self-sufficiency for such individuals."¹ The ADA provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.²

Title II of the ADA specifically addresses the responsibilities of public entities—including state medical boards—and requires that no qualified individual with a disability be excluded from participation in, or denied the benefits of a public entity's services, programs, or activities because of disability.³ Title II prohibits state medical boards from "utiliz[ing] criteria or methods of administration [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability."⁴ It also prohibits state medical boards from administering "a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of a disability."⁵ Further, state medical boards may not impose or apply "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally

¹ 42 U.S.C. § 12101(a)(7).

² *Id.* § 12101(b)(1).

³ 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

⁴ 28 C.F.R. § 35.130(b)(3)(i).

⁵ *Id.* § 35.130(b)(6).

enjoying any service, program, or activity, unless such criteria can be shown to be necessary” for the provision of the service, program, or activity.⁶

It is clear that intrusive inquiries regarding an applicant’s mental health history run afoul of the ADA to the extent that state medical boards use them as eligibility criteria to screen out applicants with disabilities and such inquiries are not necessary to determine whether an applicant is fit to practice medicine.

Regarding oversight of professional licensing bodies, the Department monitors incoming complaints, particularly those related to medical licensing, and has authority to investigate alleged violations of the ADA, seek voluntary compliance, and, where appropriate, file suit in federal court to enforce the ADA.⁷ To that end, if you are aware of anyone who has been subjected to the type of discriminatory licensing inquiries referenced in your letter, we ask that you please encourage them to file a complaint or reach out to the Department directly.⁸

While the Department has not issued guidance specific to mental health inquiries in the context of medical licensing, it has long made its position clear in the context of professional licensing generally—perhaps most notably in 1993, with the Department’s amicus brief in *Medical Society of New Jersey v. Jacobs*, Case No. 93-3670-WGB (D.N.J), and in 2014, with its Letter of Findings in the State of Louisiana Attorney Licensure System matter (both of which are referenced in your letter).⁹ In its Letter of Findings, for example, the Department stated unequivocally: “Inquiring about applicants’ medical conditions substitutes inappropriate questions about an applicant’s status as a person with a disability for legitimate questions about an applicant’s conduct.”¹⁰

In addition to the Department’s enforcement work, the Department provides technical assistance to the public through its ADA Information Line. Information Line Accessibility Specialists answer approximately 1,000 calls a week. Information on the ADA is also available on DOJ’s newly renovated ADA home page at www.ada.gov. Both the ADA Information Line and the ADA home page serve as primary points of contact for the nation’s general public, including millions of businesses, more than 90,000 units of state and local government, and more than 50 million people with disabilities who turn regularly to the Department for accurate and timely information about complying with the ADA.

⁶ *Id.* § 35.130(b)(8).

⁷ It should be noted that the Department shares ADA enforcement authority with the Department of Health and Human Services with respect to state medical boards.

⁸ Complaints can be filed online at <https://www.ada.gov/file-a-complaint/>.

⁹ State of Louisiana Attorney Licensure System, Letter of Findings, available at <https://archive.ada.gov/louisiana-bar-lof.pdf>.

¹⁰ *Id.*

The Honorable Ron Wyden
Page 3

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Carlos Felipe Uriarte
Assistant Attorney General