Order

Michigan Supreme Court
Lansing, Michigan

March 18, 2020

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

ADM File No. 2016-46

Special Administrative Inquiry Regarding Questions Relating to Mental Health on the Michigan Bar Examination Application

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By order dated January 23, 2019, the Court solicited input on whether and in what form questions relating to an applicant's mental health history should be included on the Michigan Bar Examination application. On order of the Court, an opportunity for comment in writing having been provided, and consideration having been given to the comments received, the Court directs that the Board of Law Examiners remove current questions 54(a) and 54(b) from the application, and insert question 29 of the National Conference of Bar Examiners model questions as follows:

> Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?

This revision will be effective for the February 2021 Michigan Bar Examination.

MCCORMACK, C.J. (*concurring*). In January 2019, this Court solicited public comments on whether the application for the Michigan Bar Examination should continue to include questions regarding an applicant's mental health and treatment history.

As noted in our order, until now an applicant to the bar was required to disclose whether they had ever received or refused treatment for a mental health condition that "permanently, presently or chronically" impairs the applicant's "ability to cope with ordinary demands of life" or to exercise the types of professional responsibilities that are common to the practice of law.[1] In asking the public whether the Court should eliminate

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[1] The personal affidavit section of the bar application includes Questions 54a and 54b, which ask:

> Have you ever had, been treated or counseled for, or refused treatment or counseling for, a mental, emotional, or nervous condition which permanently, presently or chronically impairs or distorts your judgment, behavior, capacity to recognize reality or ability to cope with ordinary demands of life? If yes, provide the names and addresses of all involved agencies, institutions, physicians or psychologists or other

or revise these questions, we noted a trend among state bar admission authorities nationwide of eliminating questions that ask applicants to divulge their mental health history, and instead asking applicants whether they had exhibited conduct or behavior that would negatively affect their ability to practice law in a competent, ethical, and professional manner.

Shortly after our request for comment, the Conference of Chief Justices issued a resolution urging states to stop asking bar applicants about their mental health history, diagnoses, or treatment.[2] As an alternative to "diagnosis-based" questions, the Conference endorsed the sort of "conduct-based" approach referenced in our request for comment. The Conference's resolution echoed a similar recommendation from the National Task Force on Lawyer Well-Being.[3]

These recommendations—and this Court's changes to the Board of Law Examiners' questions—do not "prioritize the needs of the applicant over the need to protect the public," as our dissenting colleague contends. Rather, they reflect a growing recognition that questions concerning an applicant's mental health are often based on unfounded generalizations about mental health diagnoses, and that admission standards that depend on the mere existence of a mental health diagnosis (and not an applicant's conduct) would violate the Americans with Disabilities Act, 42 USC 12101 *et seq*.

Most commenters—including two of our state's prominent law schools as well as the Michigan Attorney Grievance Commission, the body charged with investigating and prosecuting instances of attorney misconduct—favored the elimination of diagnosis-based

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> health care providers and describe the underlying circumstances or the diagnosis, treatment or hospitalization.
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> * * *
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> Have you ever had, been treated or counseled for, or refused treatment or counseling for, a mental, emotional, or nervous condition which permanently, presently or chronically impairs your ability to exercise such responsibilities as being candid and truthful, handling funds, meeting deadlines, or otherwise representing the interest of others?

[2] See Conference of Chief Justices, *Resolution 5, In Regard to the Determination of Fitness to Practice Law* (February 13, 2019), available at <https://www.ctbar.org/docs/default-source/lawyer-wellbeing/resolution-5_admission-to-bar-resol-item-iv-1> (accessed February 3, 2020) [https://perma.cc/H7DA-F33A].

[3] See National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (August 14, 2017), p 27, available at <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf> (accessed February 3, 2020) [https://perma.cc/YD8V-AQZ3].

questions altogether, as several of our sister states have done.[4] These commenters noted the dearth of evidence supporting the view that past mental health diagnoses are accurate predictors of future attorney misconduct. Instead, diagnosis-based questions were criticized for being unfocused, based on generalization and misconceptions about mental health, and lacking empirical evidence to support their use. (Indeed, the automatic association of mental health diagnoses with incapacity and disablement was a stigma that many commenters recognized regardless of their position on eliminating diagnosis-based questions altogether.) Many commenters voiced concern that diagnosis-based questions like those under consideration have the unintentional effect of deterring aspiring attorneys from seeking assistance.[5] And a handful of commenters noted the incongruity that once an individual is admitted to practice law in Michigan, they have no continuing obligation to apprise state bar regulators of new developments in their mental health (nor, to my knowledge, has such an obligation ever been seriously proposed).

We are well aware of the troubling statistics cited by our dissenting colleague concerning the rates of substance use and mental health problems in our profession, among licensed attorneys, and law students alike. And yet the Board of Law Examiners reports that less than 2.5% of bar applicants answered Questions 54a or 54b in the affirmative, with less than 11% of those applications requiring further "extensive investigation" by the

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[4] A recent report issued by the New York State Bar Association indicates that 10 states—Alaska, Arizona, California, Connecticut, Illinois, Iowa, Massachusetts, Mississippi, Pennsylvania and Washington—do not include any questions on their applications that ask applicants about a mental health diagnosis or impairment. See Working Group on Attorney Mental Health of the New York State Bar Association, *The Impact, Legality, Use and Utility of Mental Disability Questions on the New York State Bar Application* (November 2, 2019), pp 1-2, available at <https://www.nysba.org/mentalhealthreport/> (accessed February 3, 2020) [https://perma.cc/RK4V-T7KV].

[5] There is research to support this view. In a 2014 survey of 3,300 law school students at 15 law schools nationwide, 45% of respondents indicated that the potential threat to bar admission was a factor that would discourage them from seeing a health professional for mental health concerns. See Organ, Jaffe & Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J Legal Educ 116, 123-124, 141 (2016), available at <https://jle.aals.org/home/vol66/iss1/13/> (accessed February 3, 2020) [https://perma.cc/T9CY-RT6D].

Additionally, as several commenters noted, Questions 54a and 54b ask applicants to disclose whether they have "been treated or counseled for, or refused treatment or counseling for, a mental, emotional, or nervous condition . . . ." An applicant suffering from an undiagnosed condition and who has simply never sought treatment may honestly answer "no" to these questions, while an applicant who has been diagnosed or sought treatment must answer "yes."

Board. Those numbers hardly support Justice ZAHRA's view that Questions 54a and 54b are so necessary to the Board's mandate that eliminating them will prevent the Board from effectively vetting applicants. Applicants who have exhibited behavior that calls into question their ability to practice law in a competent, ethical, and professional manner are expected to disclose that fact to the Board. And in cases where an applicant's condition or impairment has resulted in criminal consequences, substance addiction or dependency, or licensure sanctions, such consequences must be disclosed in response to other questions on the application. By focusing the Board's inquiry on an applicant's *conduct*, rather than using an applicant's status or diagnosis as a proxy for behavior, we hope aspiring attorneys will recognize that mental health issues are not professional disqualifications. After all, there is broad agreement that applicants (as well as licensed attorneys) should be encouraged to seek treatment and counseling for mental health issues. The change we make today will allow applicants to do so without fear that their decision will subject them to increased scrutiny during the admission process.

I fully endorse this Court's decision to eliminate questions that probe the applicant's mental health and treatment history and ask the applicant to divulge that history. I favor the approach we take today, which inquires about the conduct exhibited by the applicant prior to admission. I believe this change will allow for an equally effective admission review process, prevent discrimination on the basis of an applicant's disability, and destigmatize and encourage mental health treatment in the legal profession.

BERNSTEIN, J., joins the statement of MCCORMACK, C.J.

VIVIANO, J. (*concurring in part and dissenting in part*). I agree with the Court's decision today to eliminate Questions 54a and 54b from the application for the Michigan Bar Examination. I do not agree, however, that Model Question 29 promulgated by the National Conference of Bar Examiners (NCBE) is, by itself, a sufficient replacement. Instead, I share many of the concerns raised by Justice ZAHRA regarding the Court's decision to circumscribe the Board of Law Examiners' (BLE's) ability to probe an applicant's current mental health conditions and impairments. But, rather than maintaining the status quo, as Justice ZAHRA urges, in addition to adopting NCBE Model Question 29, I would also adopt NCBE Model Questions 30 and 31.[1] Model Questions 30 and 31 inquire

[1] NCBE Model Question 29 is cited in the Court's order, while Questions 54a and 54b on the application for the Michigan Bar Examination are cited both in Justice ZAHRA's dissenting statement and in footnote 1 of Justice MCCORMACK's concurring statement. Model Questions 30 and 31 provide:

> 30. Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner?

into conditions or impairments that an applicant currently has, or has raised in a recent proceeding, that may affect the applicant's fitness to practice law. The NCBE adopted all three questions following a Department of Justice (DOJ) investigation into questions pertaining to an applicant's mental health status on the application for the Louisiana Bar. The report following that investigation concluded that inquiries into an applicant's prior mental health diagnosis and treatment history were "unnecessary" to ascertain an applicant's current fitness to practice law and that, instead, those inquiries "screen[ed] out" individuals with disabilities.[2] The report recommended the use of conduct-based questions because, as one federal court has noted, " 'past behavior is the best predictor of present and future mental fitness[.]' "[3] But the report approved of certain mental health related questions that inquired into conditions or impairments that affect an applicant's current fitness to practice law or that aid a state bar in fairly evaluating proceedings in which such a condition was asserted.[4]

I concur in the Court's decision to adopt Model Question 29 for the reasons stated in the DOJ report, but I also believe it is necessary to adopt Model Questions 30 and 31. The BLE has the duty and responsibility to ensure that all attorneys are competent to practice law in this state. As the DOJ report acknowledged, it is appropriate, and indeed essential, for the BLE to inquire into the current conditions or impairments that an applicant has that may affect his or her current ability to practice law. Further, an inquiry into conditions that have been raised in past proceedings also allows the BLE to evaluate fairly any disciplinary or legal proceedings in which an applicant was involved. Those inquiries provide the BLE with the ability to evaluate an applicant's past behavior that may shed light on his or her present or future mental fitness to provide legal services. I believe that

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> 31. Within the past five years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, any investigation, or any administrative or judicial proceeding by an educational institution, government agency, professional organization, or licensing authority; or in connection with an employment disciplinary or termination procedure? [National Conference of Bar Examiners, *Character and Fitness Investigations, Character & Fitness Resources—Sample Application*, available at <http://www.ncbex.org/dmsdocument/134> (accessed March 12, 2020) [https://perma.cc/7E27-LJNV].]

[2] *The United States' Investigation of the Louisiana Attorney Licensure System Pursuant to the Americans With Disabilities Act (ADA)*, DJ No. 204-32M-60, 204-32-88, 204-32-89, available at <https://www.ada.gov/louisiana-bar-lof.pdf> (accessed March 12, 2020) [https://perma.cc/5WAP-UK6F], pp 19-23.

[3] *Id.* at 22, quoting *Clark v Virginia Bd of Bar Examiners*, 880 F Supp 430, 446 (1995).

[4] *Id.* at 22-23.

Model Questions 29, 30, and 31, when taken together, strike the right balance between the duty of the BLE to protect the public and legal profession by ascertaining an applicant's current fitness to practice law, on the one hand, and to protect the rights and needs of bar applicants to be free from unnecessary or discriminatory inquiries into prior irrelevant medical history, on the other. Therefore, while I concur in the majority's decision to adopt Model Question 29, I dissent from its decision not to also adopt Model Questions 30 and 31.

ZAHRA, J. (*dissenting*).

In Michigan, you cannot become licensed to participate in certain occupations or professions, or assume certain state-sanctioned responsibilities, without disclosing the current state of your mental health. For instance, you cannot become a law enforcement officer,[1] practice medicine in many hospitals,[2] or pilot commercial airliners[3] without answering specific questions about your mental health. Similarly, you cannot become a foster parent,[4] adopt a child,[5] or carry a concealed weapon[6] without answering specific questions about your mental health. This is for good reason. We want to ensure that those with ongoing mental health concerns can competently execute these great responsibilities. It should therefore go without saying that, because law is "a licensed profession that influences all aspects of society, economy, and government, levels of impairment among attorneys are of great importance and should therefore be closely evaluated."[7] But today

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[1] MCL 28.609(1)(d).

[2] A cursory view of the some of the leading hospitals within the state shows that they all impose a requirement to disclose current mental illness: see University of Michigan Hospitals and Health Centers, *Medical Staff Bylaws* <http://www.med.umich.edu/mss/pdf/bylaws.pdf>, p 29 (accessed January 29, 2020) [https://perma.cc/4NK7-FUEP]; Henry Ford Hospital, *Medical Staff Bylaws* <https://www.henryford.com/-/media/files/henry-ford/hcp/physician-careers/hfbylaws.pdf?la=en>, p 23 (accessed January 29, 2020) [https://perma.cc/V9UT-HE3H]; Beaumont Health System, *Bylaws of the Medical Staffs*, <https://providers.beaumont.org/docs/default-source/governance/download.pdf?sfvrsn=f8e136b5_4>, p 14 (accessed January 29, 2020) [https://perma.cc/Y4B3-G6JP].

[3] 14 CFR 67.107.

[4] MCL 722.115(3); Mich Admin Code, R 400.9206(c)(iv) (requiring a foster home applicant to provide "[a] statement regarding any past and/or current mental health treatment or counseling by any member of the household").

[5] MCL 710.23f(5)(c).

[6] MCL 28.425b(1)(d).

[7] Krill, Johnson, & Albert, *The Prevalence of Substance Use and Other Mental Health*

this Court has barred the Michigan Board of Law Examiners (BLE) from inquiring specifically into the current state of an applicant's mental health. In so doing, this Court has turned the purpose of the BLE on its head. By eliminating pertinent questions that delve into the current state of an applicant's mental health, it has substantially impaired the ability of the BLE to accomplish its primary goal of protecting the public. Instead of being the gatekeeper that protects the public from those unfit to practice law with regard to the mental health of aspiring lawyers, the BLE has now been instructed by this Court to prioritize the needs of the applicant over the need to protect the public. I dissent from the majority's unjustified and misguided decision to bar the BLE from inquiring into the current state of an applicant's mental health.[8] I would leave the current bar application as it is.

Pursuant to MCL 600.934, candidates who wish to practice law in Michigan must prove "to the satisfaction of the board of law examiners that he or she is a person of *good moral character* . . . and [possesses the] *fitness and ability* to enable him or her to practice law in the courts of record of this state . . . ."[9] To comply with this dictate, the BLE establishes the policies and procedures for admission to the State Bar of Michigan (SBM). In addition to requiring passage of the Michigan Bar Examination, the SBM investigates on behalf of the BLE the applicant's background through its "character and fitness" process. The BLE has recently added language to the application for admission to the Michigan Bar, explaining that the BLE "must assess whether an applicant manifests any mental health or substance abuse issue which impairs or could impair an applicant's ability to meet the essential eligibility requirements to practice law." Accordingly, applicants are asked the following questions:

> Question 54a:
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> > Have you ever had, been treated or counseled for, or refused treatment or counseling for, a mental, emotional, or nervous condition which permanently, presently or chronically impairs or distorts your judgment, behavior, capacity to recognize reality or ability to cope with ordinary demands of life? If yes, provide the names and addresses of all involved agencies, institutions, physicians or psychologists or other health care providers and describe the underlying circumstances or the diagnosis, treatment or hospitalization.

Concerns Among American Attorneys, 10 J Addiction Med 46, 46 (January/February 2016).

[8] The Court has barred the BLE from inquiring into the mental health of applicants by instructing the BLE to strike Questions 54a and 54b from the application for admission to the Michigan Bar.

[9] MCL 600.934(1) (emphasis added).

Question 54b:

> Have you ever had, been treated or counseled for, or refused treatment or counseling for, a mental, emotional, or nervous condition which permanently, presently or chronically impairs your ability to exercise such responsibilities as being candid and truthful, handling funds, meeting deadlines, or otherwise representing the interest of others?

The BLE prefaces these questions by expressly noting that it "supports applicants seeking mental health and/or substance abuse treatment, and views effective treatment by a licensed professional as enhancing an applicant's ability to meet the essential eligibility requirements." The BLE also limits the breadth of the inquiries by explaining that an applicant "do[es] not need to provide information that is reasonably characterized as situational counseling. Examples of situational counseling include stress counseling, grief counseling, and domestic relations counseling."[10]

In my view, the BLE is mandated by its duty to protect the public to ask Questions 54a and 54b. Attorneys, along with surgeons and pilots, are typically identified as being susceptible to exceptionally high levels of job-related stress.[11] As one might expect, airline pilots and surgeons practicing in our finest hospitals are required to disclose current mental health concerns as a requisite to practicing their occupations. Aspiring attorneys should not be exempt from this inquiry.[12]

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[10] This guidance is very useful to highlight that the application inquires only about conditions that impair or distort judgment, as these would clearly affect a person's ability to practice law.

[11] Business News Daily, *The Top 10 Most and Least Stressful Jobs*, <https://www.businessnewsdaily.com/1875-stressful-careers.html> (accessed January 29, 2020) [https://perma.cc/Y2T5-GQKQ].

[12] In 1995, the Journal of Law and Health published an article highlighting a "highly alarming fact":

> [A] significant percentage of practicing lawyers are experiencing a variety of significant psychological distress symptoms well beyond that expected of the general population. These symptoms are directly traceable to law study and practice. They are not exhibited when the lawyers enter law school, but emerge shortly thereafter and remain, without significant abatement, well after graduation from law school.

In 2016, the Journal of Addiction Medicine published a study titled "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys."[13] The study "reveals a concerning amount of behavioral health problems among attorneys in the United States."[14] The study notes that "[l]evels of depression, anxiety, and stress among attorneys were significant, with 28%, 19%, and 23% experiencing symptoms of depression, anxiety, and stress, respectively."[15] In addition, the study also concluded that younger lawyers are the segment of the profession most at risk of substance abuse and mental health problems.[16] The concern over behavioral health problems does not solely relate to practicing attorneys. In fact, "[s]tress among law students is 96%, compared to 70% in med[ical] students and 43% in graduate students. Entering law school, law students have a psychological profile similar to that of the general public. After law school, 20-40% have a psychological dysfunction."[17] Clearly, there is significant research to support the basic premise that "stress is . . . a risk factor for law students and lawyers in regard to both physical and psychological illness."[18] At least one member of the majority even acknowledges these "troubling statistics," only to dismiss mental health concerns by noting "that less than 2.5% of bar applicants answered Questions 54a or 54b in the affirmative, with less than 11% of those applications requiring further 'extensive investigation' by the

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Beck, Sales & Benjamin, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J L & Health 1, 2 (1995–1996).

[13] Krill, 10 J Addiction Med 46.

[14] *Id*. at 51.

[15] *Id*.

[16] *Id*.

[17] Dave Nee Foundation, *Lawyers & Depression* <http://www.daveneefoundation.org/scholarship/lawyers-and-depression/> (accessed January 29, 2020) [https://perma.cc/H2CE-CGU5] (formatting altered).

[18] *Lawyer Distress*, 10 J L & Health at 10. "Stress has a major impact upon the nervous system, its structures and functions, since stress is closely associated with its effectors, and profound connections between stress and neurodegenerative diseases as well as mental disorders exist." Esch et al, *The Role of Stress in Neurodegenerative Diseases and Mental Disorders*, 23 Neuroendocrinology Letters 199, 206 (July 2002), available at <https://www.researchgate.net/profile/Tobias Esch/publication/11295412 The role of stress in neurodegenerative diseases and mental disorders/links/0c96051fe7c3e78461000000.pdf> (accessed January 29, 2020). "Stress plays a significant role in susceptibility, progress, and outcome of neurodegenerative diseases/mental disorders. It may cause or exacerbate such diseases depending on the type of stressor involved (e.g., physical, chemical, biological, mental, psychosocial etc.) and/or duration of its influence on an organism." *Id*.

Board."[19] Respectfully, the fact that there *are* applications worthy of in-depth review, however few, reveals that the BLE is properly able to identify a segment of the bar-applicant population whose mental health concerns requires extensive investigation. To strip the BLE of its ability to investigate these serious cases leaves the public unnecessarily vulnerable.

Nonetheless, the Court has decided to eliminate Questions 54a and 54b apparently based on two primary notions. The first is noted in Justice BERNSTEIN's concurrence to the Court's Special Administrative Inquiry order specifically asking for public comment regarding whether "inquiring into an applicant's mental health status [is] an effective way of assessing an applicant's 'fitness and ability' to practice law[.]" He then cites research materials to provide a greater context for this question. The problem is, however, that none of the research he cites is relevant to answering Questions 54a and 54b. Read carefully, the research speaks in terms of "a *history* of mental health diagnosis," a "*history* of previous psychiatric treatment," "lawyers who have *had* psychiatric treatment," "*having undergone treatment*," "mental health *histories*," and "mental health treatment *histories*." But Questions 54a and 54b target only "mental, emotional, or nervous condition[s]" that "permanently, presently or chronically" exist. Questions 54a and 54b only solicit mental health histories or diagnoses if the conditions are *currently* present. In sum, Questions 54a and 54b do not implicate the concerns raised by the Department of Justice (DOJ) in its investigation of Louisiana's attorney licensure system pursuant to the Americans with Disabilities Act, 42 USC 12101 *et seq*., in regard to mental health questions on bar examination applications.[20] The DOJ's concerns were related to "an applicant's 'status' as a person with a mental health disability" and, to a lesser extent, questions that speculate about the "future, hypothetical" effect of the mental condition rather than a current ability to practice law.[21] Unlike the questions posed by the Louisiana Attorney Licensure System, Questions 54a and 54b inquire about neither "status" nor the hypothetical effect of the condition; rather, the questions are limited to addressing a current ability to practice law.

Further, following the DOJ investigation, the National Conference of Bar Examiners (NCBE) revised its questions to reflect that mental health inquiries must be conduct-based, rather than diagnosis-based. These revised questions satisfied the concerns raised by the DOJ. The new NCBE questions are as follows:

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[19] *Ante* at 3 (MCCORMACK, C.J., *concurring*).

[20] The United States' Investigation of the Louisiana Attorney Licensure System Pursuant to the Americans With Disabilities Act, DJ No. 204-32M-60, 204-32-88, 204-32-89 (DOJ Investigation), available at https://www.ada.gov/louisiana-bar-lof.pdf (accessed January 30, 2020) [https://perma.cc/HAA5-82AR].

[21] *Id*. at 20, 22.

> 25. Within the past five years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?
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> 26. A. Do you currently have any condition or impairment (including, but not limited to, substance abuse, or a mental, emotional, or nervous disorder or condition) that in any way affects your ability to practice law in a competent, ethical, and professional manner?
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> B. If your answer to Question 26(A) is yes, are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?[22]

Questions 54a and 54b are entirely consistent with the NCBE's model questions. And while the Court does adopt NCBE Question 25, that question is entirely lacking in context if not considered along with Question 26. Standing alone, a question that asks "have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner" is so broad and vague that it cannot be reasonably answered. Further, this question leaves it in the hands of the applicant and the applicant alone to decide whether mental health concerns should be disclosed to the BLE. Such an inquiry strips the BLE of its gatekeeping function.

The second apparent rationale for eliminating Questions 54a and 54b is that mental health questions may actually deter prospective applicants from seeking rehabilitative counseling and treatment, or detract from the effectiveness of such professional help. Perhaps this is true. But those who willfully decline needed mental health treatment out of fear that disclosing such treatment may impede their ability to obtain a law license may very well lack the requisite good character needed to be a member of the legal profession. Professions exist "primarily for the advancement of the profession[,] . . . not for the advancement of the individual members."[23]

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[22] These questions appear as Questions 29 and 30 on the current application. The phrase "If your answer to Question 26(A) is yes" has been omitted and a note regarding the word "currently" has been added, but the language is otherwise unchanged. See National Conference of Bar Examiners, *Character and Fitness Investigations, Character & Fitness Resources—Sample Application*, available at <http://www.ncbex.org/dmsdocument/134> (accessed January 30, 2020) [https://perma.cc/7E27-LJNV].

[23] Rotunda and Dzienkowski, Legal Ethics: The Lawyer's Deskbook on Professional Responsibility (2018), § 1.6(d), p 41.

> The professional serves the public interest and the best interest of the patient or client. . . . [T]he professional is not merely in a money-making trade. The professional serves others, and thereby emphasizes quality. Gaining a livelihood is incidental. A professional offers a certain service and confers the same diligence and quality of service whether paid or not.[24]

If an applicant chooses to not seek needed treatment for a mental condition solely to avoid disclosure of that condition, the applicant has chosen to place his or her own interest in obtaining a law license over the greater good of the profession. This is precisely the reason that Questions 54a and 54b both ask whether an applicant has "refused treatment or counseling," and the reason that the BLE expressly states in the application that it "supports applicants seeking mental health and/or substance abuse treatment, and views effective treatment by a licensed professional as enhancing an applicant's ability to meet the essential eligibility requirements." Stated differently, if you have the good judgment to seek treatment when you need it and the good character to disclose your treatment to the BLE, you are highly likely to receive your law license upon a showing that this condition is manageable and under control. By contrast, if an applicant places his or her professional desires and personal concerns above the greater good of the legal profession and public, that applicant lacks the good character to enter the profession. To even suggest that the BLE should not ask mental health questions merely because such questions may deter treatment by would-be applicants is severely misguided.

In sum, I see no valid reason to preclude the BLE from asking Questions 54a and 54b on the current bar application. Every aspiring lawyer should truthfully and completely answer these questions before being granted a law license. The Court's action today materially impedes the BLE from accomplishing their duty to protect the public. Accordingly, I dissent.

MARKMAN, J., joins the statement of ZAHRA, J.

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[24] *Id.*