

## Position Statement on Discrimination against Persons with Previous Psychiatric Treatment

Approved by the Board of Trustees, March 1997  
Reaffirmed by the Board, December 2014  
Approved by the Assembly, November 1996  
Reaffirmed by the Assembly, November 2014

"Policy documents are approved by the APA Assembly and Board of Trustees...These are...position statements that define APA official policy on specific subjects..." – *APA Operations Manual*.

Many people have suffered discrimination and social disadvantage because they have a psychiatric diagnosis or a history of psychiatric treatment. Information about diagnosis or treatment has been used unfairly to deny immigration, professional or occupational licensure, employment insurance, housing and credit, and otherwise to reduce opportunities for full participation in the life of society. Stigmatization and discrimination also tend to diminish the well being of the population as a whole by discouraging people from seeking needed psychiatric evaluation and treatment.

The American Psychiatric Association vigorously opposes discrimination based on mental disorder or a history of psychiatric treatment. Such discrimination is often based on unfounded, irrational misconceptions and fears about mental illness. Moreover, categorical distinctions based on mental disorder are tantamount to class discrimination because they assume that everyone who has received a particular diagnosis or treatment is identical. In fact, individuals with the same diagnosis or receiving the same treatment may manifest different kinds of symptoms; even when the symptoms are the same, they may vary widely in their severity. Nor is there a direct or simple connection between symptom severity and impairments that may be relevant to a particular decision. For example, an individual who suffers from a severe major depression associated with weight loss and anhedonia may be disabled from working or may have no discernible decrement in work capacity.

Because economic and emotional well being are so often dependent on vocational satisfaction, discrimination in employment is especially harmful. Unfortunately, employers often ask applicants whether they have ever had a mental illness or whether they have ever been under the care of a psychiatrist. Employers argue that questions that screen for a history of psychiatric treatment allow them to delineate a group of applicants for more searching inquiry. This argument, however, relies on the assumption that the presence or absence of a psychiatric history is an accurate predictor of an individual's ability to function effectively in the workplace. Research has failed to substantiate such a causal link. Standing alone, a psychiatric diagnosis provides little direct information about whether an individual

is able to perform a specific occupational task. As a result, such "screening" questions significantly increase the risk of discrimination while producing little useful information in the great majority of cases. Moreover, to the extent that questionnaires fail to ask about physical or other medical conditions, they serve only to further stigmatize mental illness. Far more helpful in determining an applicant's fitness to perform a specific job are questions that inquire about past behavior in work or school settings, e.g. absences, frequent job changes, or significant drops in grades or work performance.

Some constructive steps have been taken to combat stigmatization and discrimination in the workplace and elsewhere in society. The most recent and far-reaching of these measures is the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213, which was enacted on July 26, 1990. The ADA provides broad antidiscrimination protection for persons with physical or mental impairments. The legislation builds on some prior federal laws such as the Rehabilitation Act of 1973, 29 U.S.C. §§ 791-794 and the Fair Housing Act Amendments of 1988 (FHAA), 42 U.S.C. §§ 3601-3619. The ADA extends the reach of these laws substantially. For example, unlike § 504 of the Rehabilitation Act, the ADA's coverage is not limited to employers or public entities that receive federal funds. All but the smallest businesses must comply with the ADA.

Under the ADA, a person with a "disability" is defined as someone who has "a physical or mental impairment that substantially limits one or more of the major life activities of such individuals," as well as individuals who have "a record of such an impairment," "or are regarded as having such an impairment." The Act prohibits the use of certain medical exams and inquires. Prior to offering employment, an employer may only raise questions about the applicant's ability to perform job-related functions and may not ask whether the person has a disability or inquire about the nature or severity of such a disability. The Act does not protect and employee who is currently using drugs illegally, abusing alcohol or who poses a "direct threat" to the health or safety of others. The Equal Employment Opportunity Commission (EEOC) is responsible for administrative enforcement of the ADA provisions relating to employers.

One important effect of the ADA has been to encourage employers to develop formal descriptions of the essential functions of various jobs, and to redesign job applications and interviews to focus on areas relevant to an applicant's ability to perform these functions. Similarly, professional licensing boards concerned with an applicant's character and fitness to practice have begun to redirect their inquiries to focus on previous behavior (not medical history) which might bear on these questions.

The permissible use of medical examinations (including mental health evaluations) remains somewhat controversial. In order to reduce the risk of unwarranted discrimination, the ADA disallows medical examinations before a job offer has been made. (Tests of the applicant's ability to perform specific job-related tasks, such as tests of physical agility, are permitted.) After a job offer has been made, or during the course of employment, a medical evaluation can play an important role in assessing the applicant's (or employee's) ability to perform a job in designing reasonable accommodations. Again, however, employment decisions must be based on the person's functional capacity, not on the person's diagnosis or disability, per se.

The EEOC has issued enforcement guidance on employment interviews and medical examinations to help

employers comply with the Act. Psychiatrists should become familiar with the basic requirements of the ADA so that they can help their patients avoid discrimination by invoking the Act's protections (e.g., declining to disclose personal information or requesting appropriate accommodations).

Although the ADA and other anti-discrimination legislation reflect a growing awareness of the need to combat discrimination, especially in employment, the APA strongly supports additional measures designed to end stigmatization and discrimination against people with histories of psychiatric treatment and to facilitate their full participation in society.

*This statement was prepared by the Council on Psychiatry and Law.*