



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Third Floor, Suite 1
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: June 20, 2024

TO: Delaware Senate and House of Representatives

FROM: Susannah Eaton-Ryan, Chairperson
State Council for Persons with Disabilities

A handwritten signature in black ink that reads "S. Eaton-Ryan".

RE: Senate Joint Resolution 6 (June 1, 2024)

The SCPD has examined **Senate Joint Resolution 6**¹ which attempts to address inappropriate and unnecessary questions and inquiries regarding behavioral health made by state professional licensure boards and has the following comments:

- Questions regarding behavioral health may be discriminatory under the ADA, and also discourage health care professionals from either disclosing behavioral health issues or seeking treatment.
- This resolution is a follow up to SB 300, passed in 2022, that updated mandatory standards for reporting and disqualifying a physician due to a physical or mental health condition, linking them to current capacity and the possibility of improvement and/or treatment. These changes were made specifically to bring the statute into alignment with the ADA and to help remove the stigma (and the negative professional consequences) of seeking treatment.
- This resolution asks that professional licensing boards under Title 24 “review all existing licensure, certification, and registration applications to revise any existing questions pertaining to mental health conditions that are not necessary to assess the current state of an applicant’s functional impairment to ensure that they are compliant with the requirements of the Americans with Disabilities Act no later than January 31, 2024.”

¹ <https://legis.delaware.gov/BillDetail/141014>

- The Resolution requires a report to be filed by February 2025, which includes certification that any forms or tools in use are ADA compliant. The professions listed include Podiatry, Chiropractic, Dentistry, Medical Licensure, Nursing, Occupational Therapy, Optometry, Pharmacy, Physical Therapy, Mental Health and Chemical Dependency, Psychologists, Speech-Language Pathologists and Audiologists, and Dieticians.
- It has been clear for some time that broad questions about mental or physical health history by state licensing authorities are widely used, and also are generally illegal and violative of the ADA.² The issue has come up repeatedly in the context of licensing for attorneys,³ and has been noted as a pervasive issue for medical professions, including dentistry.⁴ Any screening questions or inquiries must be narrowly tailored to solicit information about a person's *current* ability to perform the functions of the profession.
- The Resolution has passed the Senate and is in committee in the House.

The SCPD endorses this resolution as it seeks to ensure inquiries are narrowly tailored both to avoid discrimination but also to reduce stigma and encourage health care professionals to seek treatment.

Thank you for considering our comments. Please do not hesitate to contact the SCPD if you have any questions or comments regarding our observations.

cc: Marissa Band, Esq., DLP

² Medical Licensure Questions About Mental Illness and Compliance with the American with Disabilities Act, Journal of the American Academy of Psychiatry and the Law Online, December 2018, <https://jaapl.org/content/46/4/458>;

³ <https://www.justice.gov/opa/pr/departments-justice-reaches-agreement-louisiana-supreme-court-protect-bar-candidates>

⁴ <https://adanews.ada.org/ada-news/2024/february/preventing-professional-discrimination/>