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**Well-Being In Law**

*“Leading the legal profession to greater well-being”*

# Character & Fitness

What's Mental Health Got to Do with It?

# Why Do We Need to Remove these Questions?

*“It Is Okay to Not Be Okay: The 2021 Survey of Law Student Well-Being, 60 University of Louisville Law Review 441 (2021).*

Follow-up to the 2014 study found the top six factors that would discourage respondents from seeking help:

Mental Health Issues – Top Six Factors	2014	2021
1. potential threat to job or academic status	48%	45%
2. social stigma	47%	42%
3. financial reasons	47%	54%
4. potential threat to bar admission	45%	44%
5. the belief that they could handle the problem themselves	36%	47%
6. concerns about privacy	30%	34%

Substance Use Issues – Top Six Factors	2014	2021
1. potential threat to bar admission	63%	60%
2. potential threat to job or academic status	62%	59%
3. social stigma	43%	39%
4. concerns about privacy	43%	41%
5. financial reasons	41%	46%
6. the belief that they could handle the problem themselves	39%	38%



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# Where We've Been

- Louisiana Settlement Agreement - 2014
- ABA Resolution 102 - 2015
- National Task Force Report: *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* – 2017
- ABA Resolution 105 - 2018
- Conference of Chief Justices Resolution - 2019



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# Louisiana Settlement Agreement - 2014

Louisiana's attorney licensure system discriminates against individuals on the basis of disability, in violation of the ADA.

- “The Admissions Committee’s use of the Questions is not necessary to achieve its objective of determining whether individuals who apply for admissions to the Louisiana bar are fit to practice law...they are not the only method for identifying unfit applicants, they do not effectively identify unfit applicants, and they have deterrent effect that is counterproductive to the Court’s objective of ensuring that licensed attorneys are fit to practice.”
- “The Admission committee can achieve its objective of identify applicants who are not fit to practice law without utilizing questions that focus on an applicant’s status as a person with a mental health disability. Questions designed to disclose the applicant’s prior misconduct would serve the legitimate purpose of identifying those who are unfit to practice law or are unworthy of public trust, and would do so in a non-discriminatory manner.”

# ABA Resolution 102 - 2015

“The resolution urges state and territorial bar licensing entities, in their character and fitness determinations for the purpose of bar admission, to **eliminate** any questions that ask about mental health history, diagnoses, or treatment and **instead focus questions on conduct or behavior** that in a material way impairs an applicant’s ability to practice law in a competent, ethical, and professional manner.”



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# National Task Force Report - 2017

- Recommendations for Regulators
  - Recommendation 21. Adjust the [bar] Admissions Process to Support Law Student Well-Being
    - Re-Evaluate Bar Application Inquiries About Mental Health History
    - Adopt Essential Eligibility Admission Requirements
    - Adopt a Rule for Conditional Admission to Practice Law with Specific Requirements and Conditions
    - Publish Data Reflecting Low Rate of Denied Admissions Due to Mental Health Disorders and Substance Use



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# ABA Resolution 105 - 2018

“RESOLVED, That the American Bar Association supports the goal of reducing mental health and substance use disorders and improving the well-being of lawyers, judges and law students; and FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal courts, bar associations, lawyer regulatory entities, institutions of legal education, assistance programs, professional liability carriers, law firms, and other entities employing lawyers to consider the recommendations set out in the report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, by the National Task Force on Lawyer Well-Being.”



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# Conference of Chief Justices - 2019

“...NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges its members and state and territorial bar admissions authorities to **eliminate** from applications required for admission to the bar any question that ask about mental health history, diagnoses or treatment and instead use questions that focus solely on conduct or behavior that impairs an applicant’s current ability to practice law in a competent, ethical, and professional manner;

BE IT FURTHER RESOLVED that reasonable inquiries concerning an applicant’s mental health history are only appropriate if the applicant has engaged in **conduct or behavior and a mental health condition has been offered or shown to be an explanation for such conduct or behavior.**”















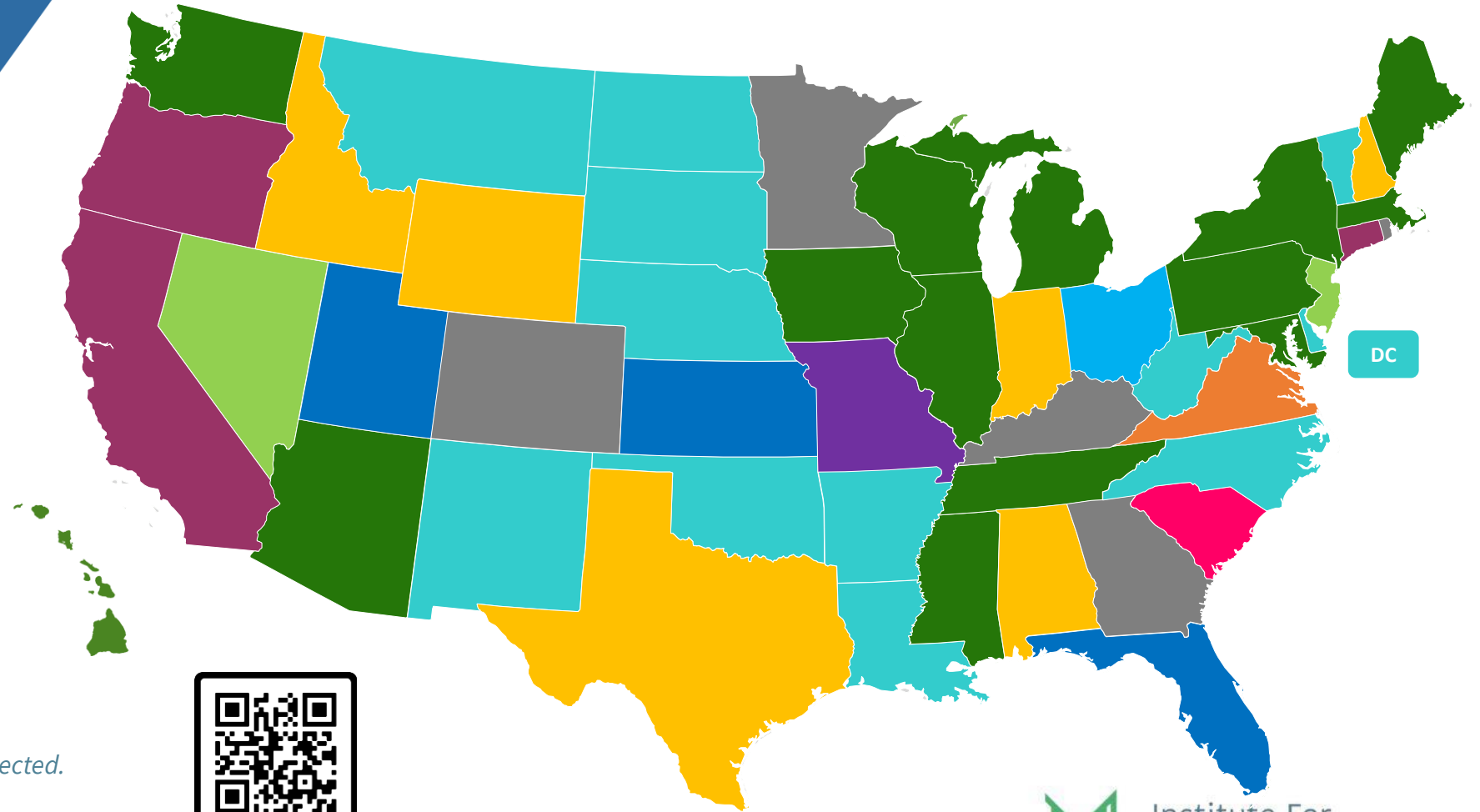
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# Where We Are\*

	None
	Diagnosis
	Treatment
	Disciplinary action
	Conservatorship
	Diagnosis, disciplinary action
	Diagnosis, conservatorship
	Diagnosis, treatment, disciplinary action
	Diagnosis, treatment, conservatorship
	Diagnosis, treatment, disciplinary action, conservatorship
	Treatment, disciplinary action
	Disciplinary action, conservatorship



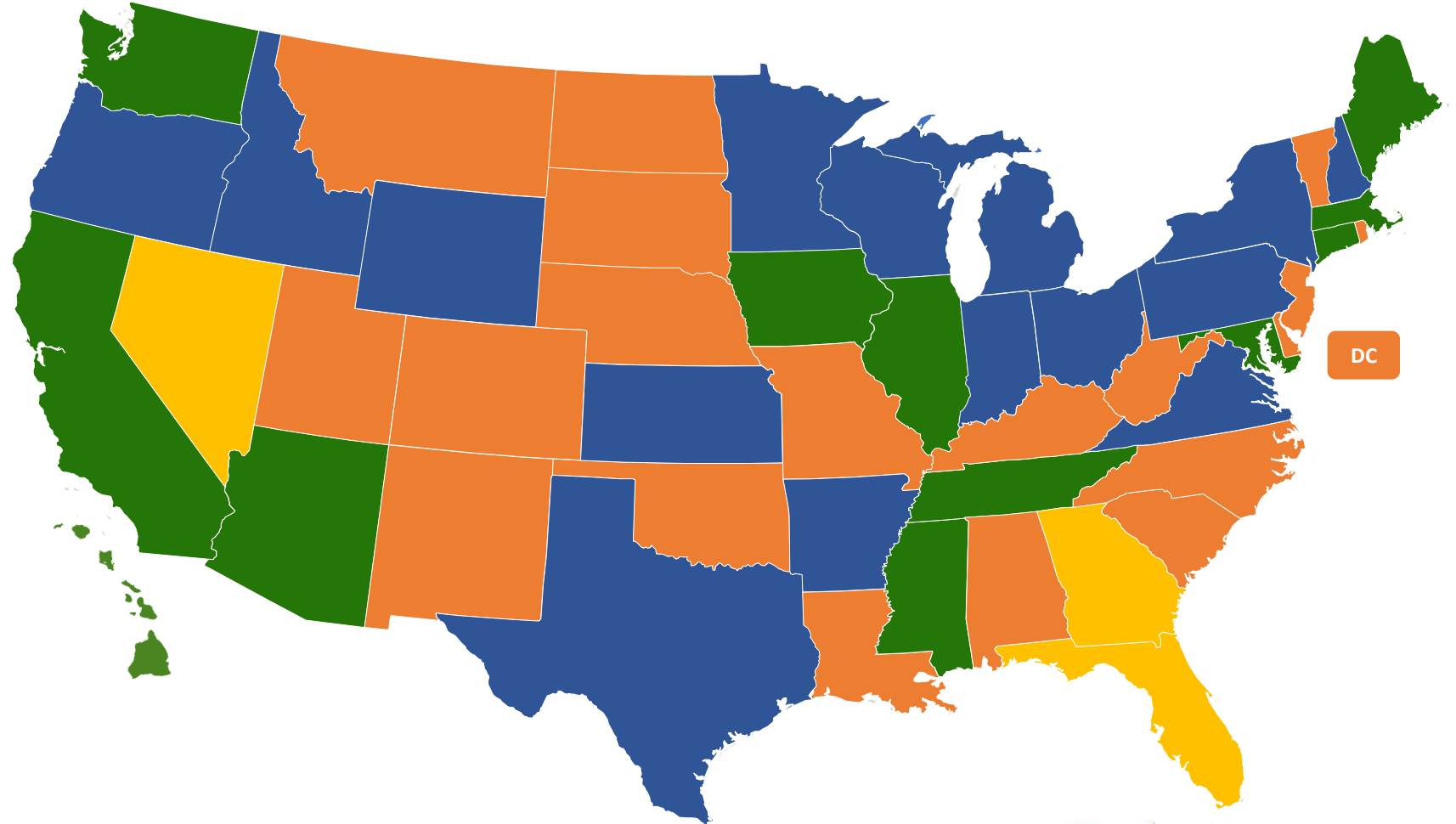
*\*This map is as of April 5, 2023.  
There may be changes that have not been reflected.  
It is based on the information available here:*



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# Where We Are



11	None – questions focus on conduct
16	Limited timeframe (5 years) questions – focus on conduct Follow up question if raised in response to another question Ask questions that focus on substance use but not mental health questions Asks question about treatment for conduct
21	NCBE States – “condition or impairment” and follow up questions or similar jurisdiction-based questions
3	Ask questions which are inconsistent with the Louisiana Settlement Agreement and ADA; go back 10 years; other



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# Where We Need to Be

- Multiple jurisdictions – UBE – more of a reason to be on the same page
- How you can get the information through other questions
- Let us help you connect
  - State Task Force; State Wellness Committees
  - David Jaffe and Janet Stearns – packet of information
- How can IWIL help you?
  - Resources, Toolkit
- Can applicants access the application without registering to preview the questions and start to gather information?

# Prompts

- How did you do it?
- What are the processes you went through to get there?
- Who are your allies?
- What comes after the changes?
  - Getting the word out that changes have been made
  - Past applicants coming back on Reddit/Twitter (the PR of it all)



# What If?

You are considering removing the questions, but...

- An issue comes up during an investigation which mental health or substance use is raised by the applicant, how do I address it?
- Does your jurisdiction have essential eligibility requirements, and if so, how are the questions tied to them?
- What other challenges do you anticipate while you are going through this process?



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# Questions

For more information, check out the resources provided or contact us at IWIL – [jdisanza@lawyerwellbeing.net](mailto:jdisanza@lawyerwellbeing.net)



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