

Guidance on Interview Questions and Privacy Concerns  
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NOTE: The information in this article is only intended to provide practical guidance. It is not intended to be definitive or to be relied on without first consulting your legal counsel.

In this, my first column as APPIC's new Public Board Member, I will discuss an issue that causes consternation and confusion among both internship and postdoctoral center interviewers and applicants/interviewees: personal questions on applications and during interviews. Such questions, if asked only of certain applicants, can be inherently discriminatory; e.g., asking only female candidates who have not raised the issue whether they have families and, if so, whether they can work the long hours required by the intern / resident position. Similarly, it is inherently discriminatory to ask only persons who appear to have a physical disability or limitation, who have not raised the issue, whether they can perform the physical requirements of the intern / resident position. Or, such questions can raise the specter of possible discrimination to the applicant / interviewee where, for example, they are not relevant to the position.

This article will offer some general principles that you should follow, and will make some suggestions as to how to decide when such questions are appropriate or inappropriate. If in doubt, don't ask the question. Generally, you may ask questions about an applicant / interviewee's education, language proficiency (if directly relevant to the requirements of the position), training and experience in psychology / mental health areas, past practica and placement, career interests and goals, professional memberships, and any other subjects directly related to the internship and the psychology profession. Ask the same basic questions of all applicants / interviewees, insofar as possible.

Conversely, you may not ask personal questions before hiring (i.e., on an application or during an interview) unless, either, they relate to bona fide qualifications for the position, or the applicant first raises such issues him/herself. For example, you should not ask questions about a candidate's marital or family status, religion, or physical condition or limitations. An exception to this rule is that Federal government agencies, states, and municipalities, and many state universities, generally require an employee to be a U.S. citizen. They also may require some explanation of any criminal record other than misdemeanors. While it is not always clear whether an intern / resident is an employee or a student, such questions may be permissible when the internship / postdoctoral center is a government agency or government-affiliated entity.

Another permissible question, relating to bona fide qualifications for the position, is whether the position requires heavy lifting or other physical exertion, the applicant can meet these physical requirements. In this context, the internship / postdoctoral center also may require the applicant to take a physical examination. However, you should ask any such questions of all applicants, not just an applicant who appears to have a disability or physical limitation.

Even impermissible questions sometimes may become permissible if the applicant first raises the issue. For example, if an applicant / interviewee asks questions about the hours of work and mentions family responsibilities or his/her religion and requests accommodation in work hours, or asks about the physical demands of the position and mentions physical limitations, the interviewer may follow up on such questions.

Other questions, which may be impermissible on the application or during an interview, may become permissible after the intern is hired. For example, proof of age and marital or parental status may become relevant, after hiring, for tax, insurance, and emergency contact purposes. Photographs also may be required after hiring for identification cards.

Some questions are almost never permissible. For example, you should never ask questions about sexual preference or whether someone has a particular disease, such as AIDS.

On a related topic, some issues never go away. In the Summer 1991 issue of the APPIC Newsletter, APPIC's previous Public Member, Patricia A. Hollander, Esq., responded to questions about intern / postdoctoral applicants using client videotapes as work samples. Briefly, she stated:

Disclosure of such videotapes without the client's consent may constitute an invasion of privacy; may violate state licensing laws or professional ethics codes; and may subject the applicant, his/her faculty supervisor, the faculty chair, and the graduate school or internship / postdoctoral site to a claim for damages. While a client's consent to the disclosure theoretically should preclude a finding of liability for such an invasion of privacy, the consent may be defective. She suggested that, to avoid the risk of exposure to legal liability and possible damages, the intern applicant should find a substitute, such as a simulation, for real-life videotapes.

This still is good advice. However, I would offer some further guidance on this topic. Where an internship / postdoctoral center is a Federal or State government entity, it also may be subject to that jurisdiction's privacy statutes. These statutes may impose legal requirements in addition to those discussed above. See, for example, the Federal Privacy Act, 5 U.S.C. sec. 552a. As a substitute for using the original videotape, the intern applicant also may remove any identifiers (e.g., cover or somehow disguise the face of the client, and delete any personal identifying information) or, if appropriate, convert the video to an audio tape, also without identifiers. Using such videotapes remains a legal risk.