

When the Doctor Discriminates: A Self-Help Guide to Diagnostic Overshadowing



Mental Health Legal Advisors Committee
(617) 338-2345

Doctors and other healthcare providers are NOT permitted to discriminate against you based on your mental illness, either in a physical location or telehealth session.

Unfortunately, healthcare providers often fail to treat, or inadequately treat, the physical symptoms of persons with psychiatric diagnoses because of conscious or unconscious bias.

Attributing physical symptoms to mental illness is called “diagnostic overshadowing.” Diagnostic overshadowing and inferior care due to stigma are unlawful discrimination under the Massachusetts Public Accommodation Law (G.L. c. 272, § 98).

Signs of Stigma and Diagnostic Overshadowing

- You are not offered treatment options or diagnostic tests for your physical symptoms.
- The healthcare provider says your physical symptoms are “all in your head” or that the cause of the symptoms is a mental health problem.
- The healthcare provider refers you to a mental health provider or references your mental health challenges, like anxiety or depression.
- The healthcare provider refuses to answer questions related to your physical symptoms.

What You Can Do

Here are suggested actions to take if you believe you are experiencing mental health bias or diagnostic overshadowing:

- Bring a friend or family member to the appointment. Due to COVID-19, the medical facility may not allow this. If so, take notes during or immediately after the appointment about what was said and happened.
- Be as clear as possible when reporting your physical symptoms to the healthcare provider, with the date they began and what triggers them.
- Use the term “diagnostic overshadowing” when communicating with your healthcare provider.
- Ask the healthcare provider why they are refusing to offer certain tests or treatments.
- Ask the healthcare provider to document why they are denying treatment you requested in your medical records.
 - If the provider says it will be in the Visit Summary, ask for a copy of it as you leave.
 - If the provider refuses to write down the denial reason, ask why, but do NOT argue.
- Request a complete copy of your medical records. Federal and state law allows providers to withhold mental health information from patients under certain circumstances. Ideally ask that the records be sent to a lawyer or other trusted healthcare provider to ensure that you receive your full records.
- If possible, seek a second opinion from a different healthcare provider who is not in the same practice as the first. If you share records from the first clinician, the second clinician may be biased by the notes.



File a Complaint with MCAD

If you believe you've experienced diagnostic overshadowing, you may file a complaint with the Massachusetts Commission Against Discrimination (MCAD) by calling (617) 994-6000.

Your complaint should include:

- Date you were discriminated against
- Identity of the healthcare provider who discriminated against you
- Description of your mental illness
- The physical symptoms you reported
- What happened when you reported your physical symptoms
- Why you think the provider knew or thought you had mental illness or a psychiatric diagnosis
- Why you believe the provider acted on stereotypes about people with mental illness

MCAD will determine whether to conduct further investigation.

*You must file a complaint with MCAD before filing a complaint in Court. Complaints with MCAD generally must be filed within 300 days of the last discriminatory act.

Resources

If you have questions or want legal help, please contact the following organizations for possible assistance:

Mental Health Legal Advisors Committee

(617) 338-2345

www.mhlac.org

<http://mhlac.org/legal-help/>

Health Law Advocates

(617) 275-2980

<https://www.healthlawadvocates.org/>

<https://www.healthlawadvocates.org/get-legal-help>