

Potentially Discriminatory Questions During Residency Interviews: Frequency and Effects on Residents' Ranking of Programs in the National Resident Matching Program

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Abstract

Background Medical students rank residency programs as part of the selection process in the National Resident Matching Program, also known as the match. Applicants to medical residency positions are protected against discriminatory employment practices by federal employment laws.

Objectives To explore students' recall of being asked potentially illegal or discriminatory questions during the selection interview, and whether these questions affected students' ranking of the programs in the match.

Methods Fourth-year medical students from a single medical school were surveyed after the match. Students were questioned about their recall of the frequency of potentially illegal or discriminatory interview questions and their effect on the program's rank.

Results Ninety percent of the 63 respondents in the study remember being asked at least one potentially discriminatory question. Among these, students were asked about their marital status (86%), about children (31%), about plans for pregnancy (10%), where they were born (54%) and/or about their national origin (15%), and about religious and ethical beliefs (24%). The majority of students did not think the questions changed their decision to rank the program, although the questions changed the way some students ranked the program, either lowering or raising the rank.

Conclusion Nearly all students reported that they were asked at least one potentially discriminatory question, although these questions for the most part do not appear to affect whether they ranked the programs.

Editor's Note: The online version of this article includes a table of "Dos and Don'ts for Interviewing Residency Candidates."

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Background

Applicants to medical residency positions are protected against discriminatory employment practices by the amended Title VII of the Civil Rights Act of 1964.¹ This federal statute prohibits employers from making employment decisions (such as hiring and promotion) or termination decisions on the basis of race, color, religion, sex, or national origin. Other federal nondiscrimination statutes prohibit employment discrimination on the basis of veteran's status, disabilities, and age.² Amendments to Title VII and judicial interpretations protect other criteria as well; for example, discrimination on the basis of pregnancy is considered sex discrimination. In addition to the protections offered under federal law, the laws of each state can extend similar, and sometimes more extensive, protection, such as prohibiting discrimination on the basis of marital status or sexual orientation.

The Equal Employment Opportunity Commission has promulgated regulations stating that: "Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification,

or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification."³ Pre-employment inquiries would be unlawful when concerning protected criteria, such as sex, disability, or national origin. The criteria for appropriate interview questions are whether the inquiries are directly related to the job in question. In addition to the interview questions, the information provided to candidates about a position can also serve as evidence of discriminatory selection procedures. For instance, statements by interviewers to female candidates, but not male, about the negative or challenging aspects of a job, can show an intent to improperly discriminate.⁴

Discriminatory pre-employment interview questions are seldom the basis of litigation. This may be in part because of the difficulty in demonstrating a direct relationship between particular interview questions and the basis of the hiring decision. However, a recent Supreme Court decision eases a plaintiff's burden in employment discrimination cases. In *Desert Palace v Costa*,⁵ a plaintiff only needs to offer indirect or circumstantial evidence that discrimination was a motivating factor in order to prove that it occurred in a defendant's employment decision. This will substantially lower the barrier to claims where the primary evidence relates to an employment interview. Further, a review of litigation of medical institutions found that lawsuits related to Title VII discrimination were the most common.⁶

Some unsuccessful National Resident Matching Program (NRMP) applicants have attempted to show discrimination in the selection process, with poor results. In *Kasuri v St. Elizabeth Hospital Medical Center*,⁷ a residency applicant alleged that she was told the defendant medical center would hire only "one Indian per year" into its internal medicine residency program. The hospital denied the charge, and the case was tried by a judge who found the witnesses for the hospital more credible; the plaintiff was ultimately unsuccessful at trial. In *Roth v Lutheran General Hospital*,⁸ an NRMP applicant was unsuccessful in an action under the Americans with Disabilities Act against the defendant who ranked him lowest among the applicants for their program. The court found the defendant had acted for legitimate reasons.

The *Barbano v Madison County* case⁹ set a standard relevant to NRMP interviews in that interviewers, including the residency director and the academic institution, become responsible for not tolerating discriminatory conduct. The court found that the knowing and informed toleration of discriminatory statements by those participating in a preemployment interview constituted evidence of discrimination by all those present and upheld a damages award in favor of the plaintiff.

The widely recognized judicial policy of deferring to academic expertise on matters involving the evaluation of academic credentials is another factor that may explain the relative lack of success by plaintiffs in litigating NRMP selection issues. In *Sidique v University of Pittsburgh Dept.*

TABLE 1		PERCENT OF STUDENTS REPORTING INFORMATION ON ELECTRONIC RESIDENCY APPLICATION
Information Provided		%
Race		70
Ethnicity		62
Couples matching		10
Marital status		52
Current or future pregnancy plans		2
Current children		8
Religion		13
Disability		10

of Dermatology,¹⁰ for instance, the plaintiff failed to establish race and national origin discrimination in the NRMP selection process of the defendant university medical center. The court supported the policy of deferring to the judgment of university faculties when academic professionals evaluate students and colleagues. Although such evaluations are not immune from judicial scrutiny, they will generally be granted deference unless there is evidence that the decision was arbitrary, capricious, or discriminatory.

Objective

The objective of this study is, first, to determine if residency programs are asking students potentially illegal or discriminatory questions during the selection process, and second, whether these questions affect the students' ranking of the programs.

Method

Survey Development

We sought to determine if potentially discriminatory interview questions were asked during residency interviews. It is difficult to determine if a question is illegal because simply asking the question does not mean that the information was used to discriminate against the applicant. However, equal opportunity specialists recommend not asking questions that may be construed as discriminatory. Therefore, these questions will be termed *potentially discriminatory questions*. It was not determined whether the information obtained was used to discriminate against candidates.

The survey was developed with the assistance of experts in the field of equal opportunity law and survey research after a review of the literature.¹¹⁻¹⁴ The survey was pretested on a sample of interns and then revised. After match day, the survey was administered anonymously by e-mail to

TABLE 2 FREQUENCY OF INTERVIEW QUESTIONS

Number of Times Questions Asked	Never (%)	1–2 (%)	3–10 (%)	11–20 (%)	>20 (%)
Are you married (engaged, divorced, separated)?	17	14	37	17	15
What does your spouse/partner do for living?	42	8	25	7	17
Is your spouse or partner supportive of you?	75	10	8	2	5
Will he or she be moving with you?	53	15	18	5	8
Do you have children?	69	7	21	2	0
Planning to have children during residency ?	90	7	3	0	0
Religious or religious-based ethics questions?	76	16	7	0	0
Disability or mental illness questions?	95	3	2	0	0
What is your national origin?	85	7	8	0	0
Where were you born?	46	15	29	7	3
What is your parents' national origin?	83	4	14	0	0
Questions related to age?	90	5	5	0	0

fourth-year medical students of a single medical school. This project was approved by the institution's institutional review board.

Survey Questions

The survey asked (1) what demographic information students had reported on their electronic residency application (ERAS), (2) whether they recalled having been asked questions that might be considered to be potentially discriminatory during the residency interview, and (3) how the questions affected their ranking of the residency programs. Responses were combined for some questions, and the highest frequency was reported. Groups were compared using Fisher exact test to allow for small numbers (SPSS Mac 10, SPSS Inc, Chicago, IL).

Results

The response rate was 62% (63 of 101 students). The demographics of the students were as follows: 44% (28) were women, 68% (43) were less than 25 years old, 73% (46) were non-Hispanic white, 24% (15) were Asian American, 31% (20) were single, and 6% (4/63) had children. Students interviewed, on average, at 10 residency programs ($SD \pm 6$), and they had a mean of 61 interviews ($SD \pm 76$). Many students applied to medicine (18 students) or surgery, including a surgical subspecialty (12 students). On the ERAS application, the student has the option of disclosing personal information either in the demographic information or in the personal statements (TABLE 1).

Ninety percent of students (57 of 63) reported having been asked at least one potentially discriminatory question (TABLE 2). Of respondents, 86% reported being asked at least once if they were married and 34% were asked more

than 5 times. All of the married students reported being asked about spouses' employment. No students indicated that they were asked questions about day care or current pregnancy. More Asian American or African American applicants were asked about their origin compared to non-Hispanic white applicants (8 of 15 compared to 1 of 43, $P < .005$). Only 2 students (both were Asian American) were asked if their racial/ethnic background affected their work ethic.

Looking specifically at the types of residencies, students applying to surgical residencies as compared to nonsurgical residencies were as likely to be asked about marital status, spousal employment, support of spouse, or whether the spouse would be moving with the student. However, 50% of surgical applicants were asked about plans for pregnancy, and only 14% of nonsurgical applicants were asked the same question ($P = .057$). Likewise, more surgical than nonsurgical applicants were asked religious-based ethical questions (3 of 6 vs 7 of 52, respectively).

Comparing the types of potentially discriminatory questions by gender, we found that men were more likely to be asked the origin of their parents (41% men, 4% women, $P < .05$) and women were more likely to be asked if their gender affected their ability or choice of specialty (17% women and 0% men volunteered information). Students who noted religion on the ERAS application were more likely to be asked religion-based questions (71% vs 16%, $P < .005$). However, disclosure of other personal characteristics was not related with potentially discriminatory questions.

In the space provided for comments, students noted many residency interviewers asked questions about how they would rank the residency program. Other articles have

TABLE 3 CHANGE IN RANK FOR STUDENTS ASKED POTENTIALLY ILLEGAL OR DISCRIMINATORY QUESTIONS^a

Topic	Raise Rank Significantly (%)	Slight Raise in Rank (%)	No Change in Rank (%)	Slight Lowering of Rank (%)
Marital or partner	4	6	86	4
Child or pregnancy	0	0	95	5
Religion-based	0	31	54	15
Disability	0	0	66	33
Race/national origin	0	0	97	3
Gender-related	0	0	90	10
Age-related	0	0	91	9

^a Note: Some of the survey questions were combined. Not all respondents answered all questions; therefore, the percentage is based on number of respondents answering.

described this practice as a potential violation of NRMP ethics and rules.^{13,15} The majority of applicants who were asked potentially discriminatory questions did not think that the questions changed the way they ranked the residency; however, questions regarding religious and ethical beliefs showed some effect (TABLE 3). Some students noted that the questions increased the rank of the program, although others thought it decreased the rank. No students noted that “due to the question there is no way I will go there.”

Discussion

Over the years, the residency selection process has become more stressful because of increased difficulty for residents to switch programs, as well as increased competition for some resident positions.¹² Studies have shown that applicants value the interpersonal interactions and the perceived happiness of the residents when making their rank list.¹⁴ Residencies are competing for good applicants and order their rank list to match the top applicants on the list. For residency programs, it is important that entering residents “fit” into the social structure of the program. Although fit is difficult to define, the social factors supporting the resident as he or she progresses through the residency play a role in the selection process.

Previous studies have focused on whether match ethics is an oxymoron.^{13,15} These studies have found that both students and programs are bending the rules of the match and that “students are being introduced to their new profession, which holds honesty and integrity among its highest values, through a process that promotes mutual distrust and gamesmanship.”¹³ In a similar manner, the medical profession holds itself above bias. Nonetheless, potentially discriminatory questions may make bias pervasive in the application process.

One goal of the residency interview is to determine if there are factors that might attract the applicant to the given

program. It has been noted that “with such high stakes involved in the match process, some medical students and residency training programs have resorted to questionable ethical practices to achieve desired outcomes.”¹³ The interviewer could ask about a spouse or the employment of a spouse to help the applicant choose that residency. For example, the interviewer might discover that the spouse is a schoolteacher and recommend a local school district for employment. These interactions could be perceived as bonding with the applicant or making the residency program more enticing. However, if the spouse is unemployed or will not be moving with the applicant, these questions can be intrusive and the information potentially used in a discriminatory fashion.

Residency interviewing could be considered an art. During the interview, the residency program attempts to determine, in part, the personal characteristics of the applicant while trying to make the residency program appealing to the applicant. Often such an exchange includes personal information. The residency interviewer considers asking about a spouse or the employment of a spouse to be “considerate,” perhaps even helping the applicant to choose that residency.

Strictly following the rule of the law means that questions that are considered acceptable are only those that are directly related to the ability to perform the job for which the applicant is applying. Questions outside this realm are not considered appropriate. It is illegal to use the information obtained from the questions to discriminate against the applicant on the basis of race, color, national origin, religion, gender, pregnancy, age, or disability.

The purpose of nondiscrimination law is to prevent employment decisions from being made on the basis of criteria that are not job-related. One area that hiring physicians may consider job-related is a residency applicant’s commitment to staying in the residency. Asking about a woman’s intent to become pregnant, however,

would not be a lawful way to determine a female applicant's commitment. Interviewers may respond if the applicant mentions a spouse, religion, or pregnancy during the interview; if applicants ask about schools for their children or where might they find a specific church, it is appropriate to answer the question, or better yet, to refer the applicant to more information.

Our study has several limitations. The first is the small sample size and our use of a single institution, which could affect the generalizability of our results. In addition, while the participants recall that potentially discriminating questions may have been asked, there is no way to determine if the responses were used to discriminate or were even communicated to the residency director. Guidance on appropriate and potentially discriminatory questions is available in the APPENDIX of the online version of this article. Although interviewers may not believe that they are using the information obtained in an illegal or discriminatory manner, the fact that the inquiry was made places the academic institution at risk for litigation.

Conclusion

Our study demonstrated that students report being asked potentially discriminating questions, and the majority did not think that the questions changed their decision to rank the program. Some students reported that the questions changed how they ranked the program, with religious and ethical beliefs remembered most frequently. However, for

the most part, these questions do not appear to affect whether the students ranked the programs. Residency program directors should consult with their medical centers' general counsel or equal opportunity officers to educate interviewers on both appropriate and inadvisable questions.

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- 3 Code of Federal Regulations, Title 29, section 1604.7 (2009).
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