



## CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

### Mental Health Counseling May Constitute A Medical Examination Under The ADA

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Under the Americans With Disabilities Act (ADA), employers are prohibited from requiring employees to undergo medical examinations unless the employer can demonstrate that the examination is job-related and consistent with business necessity by a showing that: (1) the employee requested an accommodation; (2) the employee's ability to perform essential functions of the job is impaired; or (3) the employee poses a direct threat to herself or others. 42 U.S.C. § 12112(d)(4)(A).

Questions have persisted as to whether requiring an employee to undergo psychological counseling would constitute a medical examination within the meaning of the ADA. However, The United States Court of Appeals for the Sixth Circuit recently addressed this issue and found that a reasonable jury could conclude that mandatory psychological counseling constituted a medical examination under the ADA. In *Emily C. Kroll v. White Lake Ambulance Authority*, the employer, White Lake Ambulance Authority ("WLAA"), required Ms. Kroll to undergo counseling for mental health issues because she had become increasingly emotional at work following her affair with a married co-worker. WLAA believed the Ms. Kroll's emotional state had caused her to provide substandard care to a patient on one occasion and to violate a work rule prohibiting the use of a cell phone while driving an ambulance.

In reversing and remanding summary judgment rulings in favor of WLAA, the Court found that summary judgment was not appropriate because a reasonable jury could conclude that the required counseling did constitute a medical examination under the ADA, and that the two performance issues cited by WLAA did not provide a viable basis under the ADA to require Ms. Kroll to undergo an examination.

**CLIENT TIP:** *While the final outcome of this case is still pending, it is important for employers to take special care when requiring employees to undergo medical examinations. An employer may not require a medical examination based on the employer's lay opinion that an employee needs it. Instead, the employer must be able to cite to a history of substandard performance by the employee in order to form the reasonable basis to require a medical examination.*

