

Hoarding, Housing, and DSM-5

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Hoarding of objects, trash, or animals has the potential to harm hoarders and others. Law enforcement and civil concerns arise, leading to situations ranging from health code violations to child abuse and potential eviction proceedings. DSM-5 included hoarding disorder among the obsessive-compulsive and related disorders. This change has created an opportunity for individuals who engage in severe hoarding to request reasonable accommodation from landlords, because their condition represents a disability under the Fair Housing and Americans with Disabilities Acts. We review the legal implications of hoarding disorder, tracking recent case law and arguments made in such disputes.

J Am Acad Psychiatry Law 43:492–98, 2015

The *Journal* has devoted significant attention to the legal implications of the Diagnostic and Statistical Manual of Mental Diseases, Fifth Edition (DSM-5).¹ The scope of and rationale for concerns among forensic psychiatrists have been properly stated² and reflected in a series of articles. Key points have included the manual's cautionary statement on use in legal settings, the replacement of the multiaxial diagnostic system, and the diagnostic categories that are likely to arise in the course of criminal and civil litigation (for example, psychoses, substance use, paraphilias, and posttraumatic stress). In this article, we review the medicolegal implications of the new diagnosis, hoarding disorder, and potential emerging case law in the area of housing rights of persons with disabilities.

Although there are many implications for hoarding in legal contexts,³ the elevation of the disorder in DSM-5 has given new potency to entitlement claims under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968),⁴ the Fair Housing Amendments Act (FHAA),⁵ and the Americans with Disabilities Act (ADA)⁶ and under state and local laws. Title

VIII, originally intended to bar housing discrimination on the basis of race, color, religion, or national origin, has been interpreted as protecting persons with disabilities. The FHAA protects persons with disabilities and bars landlords from refusing reasonable accommodations.⁷ The ADA adds the key element of disability as a legally protected class of citizens, with its reach extending to the workplace and to public spaces. According to an authority with the National Housing Law Project in San Francisco, the presence of hoarding should be sufficient showing of disability to obviate the need for external documentation.⁷ Documenting the diagnosis of hoarding disorder may be difficult, because of hoarders' lack of self-awareness and reluctance to seek help. In this article, we will review the implications for hoarding disorder, when construed as a disability, for fair-housing claims. We believe that, over time, forensic psychiatrists will be drawn into the legal arena to provide evidence of disability.

Hoarding Disorder

Hoarding behaviors have had many labels and misnomers (e.g., senile squalor), many from historical or literary figures (e.g., Diogenes and Miss Havisham).⁸ There was sufficient momentum among clinicians and researchers to regard hoarding disorder as meriting diagnostic status. For reasons explained in the DSM-5 and elsewhere,⁹ it was nested within a new grouping of disorders, obsessive-compulsive and related disorders (obsessive-compulsive disorder,

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Disclosures of financial or other potential conflicts of interest: None.

der (OCD), body dysmorphic disorder, trichotillomania, and excoriation disorder). In the DSM, Fourth Edition, it was listed as a variant of OCD, which already had been the subject of claims for workplace accommodation,¹⁰ often for tardiness and absenteeism.¹¹

Hoarding disorder should not be diagnosed if the underlying behaviors are better explained by another condition (for example, neurocognitive disorder) or are attributable to a known medical condition (for example, Prader-Willi syndrome) or a lack of energy for housekeeping, as in depression. The affirmative diagnostic criteria for hoarding disorder include:

Persistent difficulty discarding or parting with possessions, regardless of their actual value;

a perceived need to save the items and distress associated with discarding them;

the accumulation of possessions that congest and clutter active living areas and substantially compromises their intended use. If living areas are uncluttered, it is only because of the interventions of third parties (e.g., family members, cleaners, or the authorities); and

clinically significant distress or impairment in social, occupational, or other important areas of functioning (including maintaining an environment safe for oneself or others).¹

The main additional diagnostic specifier is whether the individual shows excessive acquisition of unneeded items in addition to difficulty discarding them. The other specifiers are on an insight spectrum ranging from good/fair appreciation to delusional perception. Lack of insight is especially salient in housing cases, wherein individuals with the condition are often blind to the hazards and implications of their living conditions and tend to underestimate their capacity for self-directed remediation.

In addition to the DSM-5 criteria, rating scales for hoarding (with or without OCD) may be of benefit in quantifying and describing persons with the condition.¹² Examples include the self-reported Saving Inventory, Revised (SI-R), and the Hoarding Rating Scale–Interview (HRS-I).¹² Because nonpsychiatrists conduct many hoarding assessments, the multidisciplinary HOMES instrument has been a useful way of surveying a person's living conditions.¹³ HOMES tracks the domains of health, obstacles,

mental health, endangerment, and structure and safety.

Hoarding disorder is not rare and is not limited to a subset of those with OCD. Epidemiologic studies approximating DSM-5 criteria have placed the point prevalence at 5.8 percent, and the lifetime prevalence up to 14 percent.¹⁴ A London-based study found a prevalence of 1.5 percent and suggested that older age, unmarried status, and comorbid physical and mental disorders were risk factors.¹⁵ Hoarding disorder is associated with significant risk of impairment in adaptive skills. Frost and colleagues,¹⁶ sampling hundreds of subjects, found that the Activities in Daily Living in Hoarding (ADL-H) instrument had strong psychometric utility in assessing impairment. Using the Quality of Life (QOL) scale, Saxena and colleagues¹⁷ found overall lower QOL among hoarders compared with persons with nonhoarding OCD. The literature does not support a marked gender difference for hoarding disorder. There is a trend toward older age of onset, especially in the context of new cases reported by adult protective services.

The association with OCD and the degree of functional impairment among persons with hoarding disorder underlies significant psychiatric comorbidity. Wharton and van Meter¹⁸ estimated a point prevalence of hoarding disorder of five percent and of OCD of two percent in the general population. Further estimates showed that 5 percent of persons with OCD accumulate objects because of compulsive behavior, 25–30 percent of persons with OCD have comorbid hoarding disorder, and 10–15 percent of persons with hoarding disorder have comorbid OCD. Living in squalor, limitations in lifestyle and personal connections, and possible legal troubles are general risk factors for depression. Hoarding in the older adult may also be associated with neurocognitive disorders and merits specialized assessment.

Hoarding and Disability: Legal Nexus

The potential for legal implications of hoarding was reviewed in this *Journal* in 2010.³ At that time, incidents of hoarding were trending in public awareness, as evidenced by reality television shows such as *Hoarders* and *Hoarding: Buried Alive*. Although someone sympathetic to the problems created by hoarding could construe the condition as a disability, hoarders' typical resistance to receiving help, as graphically illustrated on television, may work against them. That is, they were viewed as willfully

disregarding health and safety and therefore not as proper subjects for accommodation under the law. This view may be changing, as hoarders now have allies in the legal, mental health, and community service fields.

Like its predecessors, DSM-5 contains a disclaimer of authority over legal matters (while recognizing the inevitability of its citation) that is succinctly stated in its “Cautionary Statement for Forensic Use of DSM-5” (Ref. 1, p 25). As Wills and Gold observed, the “imperfect fit” of clinical and forensic goals has been an active area within forensic psychiatry and an uncomfortable one, at times, for testifying experts (Ref. 2, p 133).

The nexus between DSM-5 and the law includes the basic operational definition of a mental disorder as a “. . . clinically significant disturbance. . . usually associated with significant distress or disability in social, occupational, or other important activities” (Ref. 1, p 20). The next question is the degree to which a diagnosis of hoarding disorder reaches the threshold for or is congruent with disability criteria under the law. Subjective distress or creating distress in others would not be sufficient, generally, in a discrimination claim. Disability, as implied in any DSM-5 diagnosis, could be used as evidence of disability, variously defined, in relation to financial benefits and entitlements. However, with the cessation of Axis V’s Global Assessment of Functioning and the new World Health Organization’s Disability Scale (WHODAS 2.0) not yet formally adopted, quantification, if needed, may be difficult.¹⁹ For clinical purposes, employment of instruments such as HOMES may be sufficient for tracking living conditions and safety, but may be insufficient in forensic settings, wherein judges may be looking for an operationalized view of disability in a given case. For example, the term “clutter” may not capture the scene of a home in which “goat paths” are needed to navigate and the tenant may easily be trapped.

Gold notes the ambiguity in DSM-5’s use of disability: “When DSM-5 uses the term disability, as in its conceptual definition of a mental disorder, the context usually indicates that impairment is actually meant” (Ref. 19, p 176). Impairment is, in turn, a criterion for a claim of disability under the ADA. Disability means “a physical or mental impairment that substantially limits one or more major life activities of such individual” (Ref. 6, § 12102). Although hoarders may not self-identify, those who do could

claim, for example, that the impairment in caring for oneself could qualify as a disability. This claim, in turn, could be used in the service of a legal argument regarding discrimination in housing. This possibility is relevant to persons who live in government-sponsored or subsidized housing. The ADA (Title II, Public Services) protects qualified individuals regardless of whether the state or local agency receives federal assistance. A person with disability residing in a private housing facility as a tenant and not covered under the ADA may have recourse under the Fair Housing Act.⁵ A reasonable accommodation of the impairment may or may not affect the individual’s disability status, though, as we will see, it has bearing on the adjudication of a claim in a landlord–tenant dispute.

Hoarding carries significant social and economic costs, adding a layer of complexity.²⁰ In landlord–tenant disputes, persons with hoarding disorder are often susceptible to homelessness and to the possibility that their children will become dependent on state protective services. Given that citizens with disabilities are entitled to equal access to housing, mental disabilities are included, reflecting current psychiatric nomenclature. A DSM-5 diagnosis, by itself, however, does not confer rights under the ADA and related legislation. Persons with disabilities have a constitutional right to live in the community.²¹ However, when their behavior represents a direct threat to the health and safety of others (usually physical violence), there may be exceptions.^{7,22} The other obvious exception is when a child or older adult is in danger, and it is not unusual for hoarders to face removal of children or to be subjected to guardianship proceedings. Thus, the right to live in the community is qualified to the degree that the rights of others are not violated.

Tenants who hoard could present health dangers to self and others in the form of fire hazards, sanitary deficiencies, obstructed access, and the special problems associated with the accumulation of animals.³ As a somewhat heterogeneous group, hoarders now have support from DSM-5 in relation to the legitimacy of their condition and its associated features. They get this support from advocates in public and private sectors of law and indirectly from acknowledgment from landlords’ associations that hoarders are persons with disability rights. As a Virginia real estate blogger wrote, “Unless you carry a DSM5 . . . in your car you may not know if a disability is covered

under the Fair Housing Act.”²³ There had been some movement toward disability rights for hoarders before DSM-5.^{24,25} Given the activity on the Internet since 2013,^{23,26,27} it appears that the new manual has breathed new life into litigation on behalf of disabled hoarders.²⁸

Hoarding: It’s in the Culture

With hoarding in the public consciousness and with added traction from DSM-5, the focus on the disorder has shifted from a nuisance phenomenon to a rights-driven matter. There is evidence that the real estate industry has accepted DSM-5 as proof of hoarding disorder as a disability. For example, one consulting firm posted: “The American Psychiatric Association (APA) has recently announced that compulsive hoarding is now considered a mental disability, and is therefore protected under the nation’s various disability related laws. . . .”²⁹ Ripples of anxiety are appreciable among landlord associations. For example:

A mental disorder does not have to be diagnosed to be claim worthy. If a resident “might” be perceived as having a handicap or mental disorder (however you frame it), it can trigger a Fair Housing discrimination complaint. Just collecting SSI [Supplemental Security Income] or SSDI [Social Security Disability Insurance] benefits can be enough to meet the definition of a disability [Ref. 23].

In private-sector claims, although the tenant may be required to assert a disability, there may not be a requirement that the condition meet ADA standards, only that discrimination against a disabled person has taken place. The general rule is that the tenants who claim discrimination must assert, in writing or orally, that they are requesting an accommodation for a disability.⁷ Although the request does not have to say “reasonable accommodation,” it must be specific and indicate a nexus between the disability and the requested lease variance.⁷ The request may fail if the remedy places undue burden on the landlord or if the tenant’s behavior is dangerous.⁷

PreDSM-5 Case Law

Ronan³⁰ reviewed pre-DSM-5 case law, suggesting that the tactic of requesting reasonable accommodation for hoarding is viable. His 2011 law review article endorsed the inclusion of hoarding disorder in DSM-5 on the basis of providing guidance for the courts on eviction cases. Citing a 2005 District of Columbia case, *Douglas v. Kriegsfeld Corp.*,³¹ the author noted that the hoarding behaviors were labeled

as part of a mood disorder. The important ingredient in the tenant’s position is the request for reasonable accommodation. Once the landlord is aware of the request and the likelihood of a handicap or disability, the litigation threshold has been reached. The accommodation in *Douglas* was a stay of eviction long enough to have the premises cleaned: a remedy, provided the court sets a time limit. However, as clinicians know, cleanup for hoarders’ homes often takes longer than a judge deems reasonable. When the hoarder does not account for the hoarding behavior or fails to draw the connection between the underlying disability and the problematic home conditions, the court may reject the claim. Ronan,³⁰ citing *Pine Valley Court Apartments v. Bowe*,³² noted that judges may react to hoarding behaviors, that they feel are offensive. In *Pine Valley*, the judge concluded that remediation was impracticable, based on what Ronan refers to as “cursory reasonable accommodation analysis” (Ref. 28, p 258). It is best for the hoarder’s advocate to be prepared to offer solutions to the underlying clinical problems. As Ronan stated, “Hoarders require an accommodation that is tailored to the source of the mental disability, not a transitory solution” (Ref. 30, p 237).

Although a diagnosis of hoarding disorder may further a request for accommodation, sometimes hoarding is a symptom of another serious mental disorder with lack of capacity, such as dementia or psychosis. Such a primary diagnosis raises a question of whether the proper focus should be on accommodations for hoarding or on the need for guardianship or commitment. Forensic psychiatrists may have a role here. As always, there is a need to balance the rights of the individual against those of others. A series of New York City Housing Authority cases underscores the importance of such individuals having guardians and attorneys, so that their rights are optimized.³³ The *Blatch* cases,³³ decided by federal court Judge Swain in 2005, were a class-action suit on behalf of mentally disabled New York public housing tenants who had been evicted for perceived violations. The decision noted at least two cases of hoarding, although the plaintiffs’ lack of insight was due to chronic psychotic conditions. Judge Swain’s opinion underscored the historical lack of sensitivity displayed by rulings made by an Impartial Hearing Officer (IHO). For example, J.G., a 71-year-old woman with schizoaffective disorder and possible dementia, was evicted without having her psychiatric

condition reviewed and without access to counsel, despite her wishes. The hearing officer concluded:

Tenant admits the charges and they are deemed proven. [JG] argued that she will, in her own time, clean up her apartment, but offered no testimony or other evidence that could persuade the hearing officer of her bona fides.

Tenant is clearly disturbed and unable to manage her own affairs. The hearing officer hopes that she will allow the Authority into her apartment to effect a general cleaning and perhaps forestall her eviction. Nonetheless, on the current record the Housing Authority must have the right immediately to terminate this tenancy as it constitutes both a vermin harborage and fire hazard neither of which can be lawfully tolerated [Ref. 33, p 14].

It took further litigation to establish J.G.'s rights. In a second case, plaintiff M.B. was a garbage hoarder with schizophrenia. Although he was manifestly incompetent, the eviction proceedings disregarded his rights. Judge Swain noted: "No rational fact finder could conclude, on the basis of the administrative termination hearing, that [MB] was competent to represent himself in defense of the charges; the termination of his tenancy rights was thus accomplished in violation of [MB's] right to due process" (Ref. 33, p 15). The situation was corrected after a guardian was appointed.

The court's conclusion in *Blatch* was that failure to acknowledge the tenants' disabilities and need for external support constituted a violation of the equal protection clause of the Fourteenth Amendment. Accordingly, the New York City Housing Authority was ordered to develop procedures that take into account material factors in the mental health domain. In New York City, the adjudication of these landlord-tenant disputes may turn on whether the situation is "curable." Tenants who receive a Notice to Cure may be obligated to reverse the hoarding conditions within an impracticably short period (there are many variables).³⁴ The eviction process itself is temporizing, and the tenant's request for reasonable accommodation could lead to the imposition of a third-party decision-maker and efforts at therapy. If the underlying disorder is not curable in a medical sense, the landlord-tenant dispute may not be curable legally within a reasonable time frame. Research on the use of cognitive behavioral therapy (CBT) for hoarding disorder suggests that it is variably effective against aspects of hoarding, notably difficulty in discarding.³⁵ Improvement correlates with the number of sessions. Although we would consider a hoarder's agreeing to CBT to be a reasonable solution, the duration of treatment could be a sticking point from

the landlord's or neighbors' point of view. These details would have to be negotiated case by case. The process may be aided by the multidisciplinary work of a community task force, an increasingly important element in mediating the problems of hoarders.^{36,37}

Emerging Case Law

Most instances of landlord-tenant disputes over hoarding are handled without formal litigation. Instead, FHA or ADA claims for reasonable accommodations are handled locally and administratively (Personal communication with Katherine Brady, Esq. of the National Housing Law Project, San Francisco, June 5, 2015). That hoarding disorder has official status may also increase the likelihood that cases do not have to be tried. Thus, there is little in the way of case law that has reached appellate courts.

A recent decision in federal court in Pittsburgh, Pennsylvania, has sent a strong signal that hoarding disorder would qualify as a disability under federal standards. In *Goldsmith v. CBS TV Broadcasting*,³⁸ the plaintiff, Ken Goldsmith, *pro se*, undertook a "seemingly endless campaign" against his landlady, Ms. Lucey. It was not his first time wrangling with a property owner. The apartment was loaded with trash, insects, and human waste. Ms. Lucey evicted Mr. Goldsmith in 2012, and he then used the courts to support his position, first that he was bankrupt and ultimately that he was a victim of discrimination as a disabled hoarder. The eviction made the news,³⁹⁻⁴² and Mr. Goldsmith sued KDKA-TV (the CBS affiliate) and others for participating, alleging a conspiracy by his landlord, the media, and local officials.

In the 2015 opinion, the court, expressing exasperation, decided to draw a line "here, and now"³⁸ in terms of the relief the federal courts could grant. After examining parameters of fair housing and disability claims, Judge Hornak decided to preserve Mr. Goldsmith's claims under FHAA and ADA:

For the purposes of the analysis at this stage of the game, Mr. Goldsmith has alleged enough in his Amended Complaint to save his FHAA and ADA claims for now because he alleges that he made "repeated requests" that his landlord Lucey accommodate his "perceived disability" as a hoarder by giving him (Goldsmith) "additional time and additional storage space to help reduce some non-essential surplusage and packing boxes/materials within the apartment, even if only by opportunity to pay an additional rent charge for the accommodation of storage in the otherwise empty basement area" (Ref. 38, p 10).

The court reiterated that it was not judging the merits of Mr. Goldsmith's arguments, but only permitting another round of briefings. In our view, this action underscores the emerging legitimacy of hoarding disorder as a basis for a disability claim, at least in the housing domain.

Discussion

Unlike many psychiatric disorders, hoarding disorder cannot always be regarded as a private matter. When public health, personal safety, and child welfare are at stake, hoarding in its various forms may intersect with legal systems. We agree with Ronan, who stated, "Housing law, to be effective, must balance the interests of the individual with that of the general public" (Ref. 30, p 236). Under its higher profile in DSM-5, hoarding disorder is viewed principally as "compulsive," but the cognitive components of the condition create interesting scenarios when the worlds of the landlord and tenant collide. The cognitive set in hoarding disorder is not formally psychotic, but the degree of denial of illness and the quality of beliefs held about the value of hoarded objects are impediments to rational, amicable negotiation.³⁰

Psychiatrists are in a position to assist attorneys and courts to understand hoarding disorder and its unique clinical features. Bolstered by DSM-5, we can assert with confidence that hoarding disorder is genuine and accompanied by impairment, disability, or both. We can also provide a realistic appraisal of the risks of a hoarding tenant or homeowner in terms of harm to self, others, and property. When it comes to solutions, we agree with Thrope⁷ and Ligatti,²⁸ who give the sensible advice that clean-up plans must be structured and doable within a reasonable time frame. It cannot be a matter simply relegated to the landlord and tenant. Instead, mental health professionals and hoarding task forces are likely to make a difference in the long term.^{37,43}

Like all persons with disabilities, those with hoarding disorder may unlawfully be the objects of discrimination, as we have illustrated. The view that hoarders create their own problems runs counter to contemporary views of disability. Although we hesitate to speculate on whether hoarding disorder could be used to defend against criminal charges (for example, a fire that starts in hoarded newspapers), the laws of fair housing appear conducive to thoughtful analysis of the borders among willful neglect, lifestyle

choice, functional psychiatric disability, and age-related mental capacity. We look forward to developments in jurisprudence, as further scientific evidence on hoarding disorder and its treatment settle in among clinicians and expert witnesses.

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