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Forced into Fitness: The Need for the Legal Profession to Update its Mental Health Approach

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Forced into Fitness: The Need for the Legal Profession to Update its Mental Health Approach

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At the freeing age of sixteen, the only obstacle to unbridled rebellion is making sure you ask for permission to borrow the car. Unbeknownst to you, you are traveling in a speed restricted school zone and now have a ticket to explain to your parents. Years later, you apply to law school. Suddenly that ticket becomes relevant once again.

It may not surprise you that law school admissions care about that traffic violation the week before prom. What may instead be shocking is that such diligent attention to your life stops short of something critical. The bureaucracy of the bar's approach to mental health is medieval, and it bleeds through to law schools and the legal profession in its entirety.[1]

Question 31 on the bar application, that every young attorney in Kentucky must complete to become licensed, asks about mental health in the same category as substance and alcohol abuse.[2] The question reads: "Do you currently have any conditions or impairments that in material ways affects your ability to practice law in a competent, ethical, and professional manner?"[3] Faced with a simple 'Yes' or 'No,' an applicant's mental health status is far too simplified.

Mental health is gaining prevalence as movements focused on ending the stigma continue to advocate for education and awareness.[4] Without a consistent dialogue on mental health, those that struggle feel shame, making them reluctant to seek the necessary help.[5] This dire need to raise awareness creates no caveat for the legal profession. While there are many high stress professions, being an attorney has an additional layer of stress that is unique amongst the professional landscape.[6]

Adversity is a defining trait for lawyers; for an attorney to be triumphant for their client, another attorney must be defeated.[7] A physician certainly faces high stress situations, but hospitals do not send in another doctor to try and kill the patient that the other doctor is actively trying to revive.[8] The stigma on mental health is further magnified when you are supposed to problem solve.[9] When the attorney, the source of the solution, has the issue then each solution they craft for their clients becomes infected by their own struggles.

Untreated mental health issues can trigger the usual concerns of substance abuse, marital problems, and financial angst.[10] But for lawyers, disciplinary action by the bar also looms in the background.[11] Consequently, state bar associations say the tally of lawyers committing suicide continues to rise.[12]

Many factors contribute to the decline in mental health. But for lawyers, the issue gains prominence in law school.[13] Often, students begin law school healthy, but health quickly shifts to nothing more than an evasive ideal by graduation.[14] A high percentage of third-year students report having concerns that seeking help for mental health would threaten their job status and bar admission.[15] This rate was higher than the percentage of first-year students who expressed concerns about mental health impacting their legal futures.[16] The rate increase suggests that law students receive a message that seeking help may be problematic during their law school tenure.[17] The open culture of competitiveness breeds a silent culture of internal struggle. Such struggles can manifest themselves in excessive drinking, illegal drug use, eating disorders, and self-harm.[18]

Kentucky recently moved to the forefront on this issue. In *Doe v. Supreme Court of Kentucky*, Doe struggled for two years with bar admittance and was interrogated by the bar about her mental illness.[19] The bar seemed concerned about her practice despite her own physician not echoing those same concerns.[20] But for procedural issues, Doe's claims might have reached different conclusions.[21] Judge Walker did not shy away from making it known that other claims like Doe's are out there, and the court is ready for them.[22]

Judge Walker noted that this issue is not just about Doe, but also about the lawyers that get to decide who else can be a lawyer and the inherent issues with this form of internal monitoring when it comes to mental health.[23] Those concerns materialized this past winter when four Kentucky lawyers committed suicide during the holiday season.[24]

The profession has highs and lows, inherent in that reality is the weight of those lows stacking up over a career, without management tools. Accompanying the inability to battle mental issues alone is the looming threat of bar repercussions. The fear is that the repercussions could end your career, and state bars make subjective decisions on whether a lawyer can continue their practice.[25]

There are more anecdotal stories about law students and their struggles than there are empirical studies. Concealing this issue is not the solution.[26] Law school faculty bears the responsibility for the development of their students.[27] Schools cannot expect their students will grow professionally when they battle significant mental challenges. Transitioning into law school and learning the language, dealing with job prospects, and balancing the financial upheaval all create an environment that breeds mental health concerns.[28]

Ideally, there would be a full-time law school mental health counselor to address the unique pressures law students face.[29] This role would aid in de-stigmatization while also providing immediate help.[30] Further, Question 31 dealing with character and fitness on the bar application etches the stigma in stone. Taking care of yourself seems to actually make you less fit to practice law.[31] Some state bars have removed this question, and the law schools of Kentucky are pushing for the same.[32]

As legal professionals, we continue to not only ignore this issue, but to actively punish those that seek the help they need. We, as the self-policing profession, strip away our own volition to help ourselves. Judge Walker wrote that one day, a law student is going to die when they choose self-help over medical care because they fear the repercussions on their careers; he writes, "[i]t is not a matter of if, but when." [33]

The profession must seek solutions for this prevalent issue with the same tenacity with which we advocate for our clients. Legal professionals sign up to don the problems of others but fall terribly short when addressing their own.

[1] *Doe v. Supreme Court of Kentucky*, 482 F. Supp. 3d 571, 575 (W.D. Ky. 2020).

[2] Monica Harkins, *UK Law Students Push to Remove Mental Health Question from Bar Exam Application*, WTVQ (March 21, 2021), <https://www.wtvq.com/2021/03/21/uk-law-students-push-to-remove-mental-health-question-from-bar-exam-application/> (<https://www.wtvq.com/2021/03/21/uk-law-students-push-to-remove-mental-health-question-from-bar-exam-application/>).

[3] Khyati Patel, *UK Law Students Call for Removal of Mental Health Question From Bar Exam Application*, Spectrum News 1 (March 12, 2021), <https://spectrumnews1.com/ky/lexington/news/2021/03/12/uk-law-student-tackle-mental-health> (<https://spectrumnews1.com/ky/lexington/news/2021/03/12/uk-law-student-tackle-mental-health>).

[4] Mayo Clinic Staff, *Mental Health: Overcoming the Stigma of Mental Illness*, Mayo Clinic (May 24, 2017), <https://www.mayoclinic.org/diseases-conditions/mental-illness/in-depth/mental-health/art-20046477> (<https://www.mayoclinic.org/diseases-conditions/mental-illness/in-depth/mental-health/art-20046477>).

[5] *Id.*

[6] Rosa Flores & Rose Marie Arce, *Why are Lawyers Killing Themselves?*, CNN (Jan. 20 2014, 2:42 PM), <https://www.cnn.com/2014/01/19/us/lawyer-suicides> (<https://www.cnn.com/2014/01/19/us/lawyer-suicides>).

[7] *Four Ky. Lawyers have Committed Suicide*, The Enterprise (Jan. 19 2021), https://www.nolangroupmedia.com/manchester_enterprise/four-kentucky-lawyers-have-committed-suicide/article_fc405a64-59e5-11eb-8d1b-fb4089cf70c8.html

(https://www.nolangroupmedia.com/manchester_enterprise/four-kentucky-lawyers-have-committed-suicide/article_fc405a64-59e5-11eb-8d1b-fb4089cf70c8.html).

[8] Flores & Arce *supra* note 6.

[9] Free Enterprise, *supra* note 7.

[10] Flores & Arce *supra* note 6.

[11] *Id.*

[12] *Id.*

[13] Doe v. Supreme Court of Kentucky, 482 F. Supp. 3d 571, 584 (W.D. Ky. 2020).

[14] *Id.*

[15] Jerome M. Organ, David B. Jaffe, & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. of Legal Ed. 116, 141 (2016).

[16] *Id.*

[17] *Id.*

[18] *Id.* at 136.

[19] Doe v. Supreme Court of Kentucky, 482 F. Supp. 3d at 574.

[20] *Id.*

[21] *Id.* at 584.

[22] *Id.* at 575.

[23] *Id.*

[24] Free Enterprise, *supra* note 7.

[25] Flores & Arce *supra* note 6.

[26] Organ, Jaffe, & Bender, *supra* note 15 at 119.

[27] *Id.* at 146.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] Doe v. Supreme Court of Kentucky, 482 F. Supp. 3d 571, 576 (W.D. Ky. 2020).

[32] Monica Harkins, *UK Law Students Push to Remove Mental Health Question from Bar Exam Application*, WTVQ (Jan. 29, 2021), <https://www.wtvq.com/2021/03/21/uk-law-students-push-to-remove-mental-health-question-from-bar-exam-application/> (<https://www.wtvq.com/2021/03/21/uk-law-students-push-to-remove-mental-health-question-from-bar-exam-application/>).

[33] Doe v. Supreme Court of Kentucky, 482 F. Supp. 3d at 584.



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