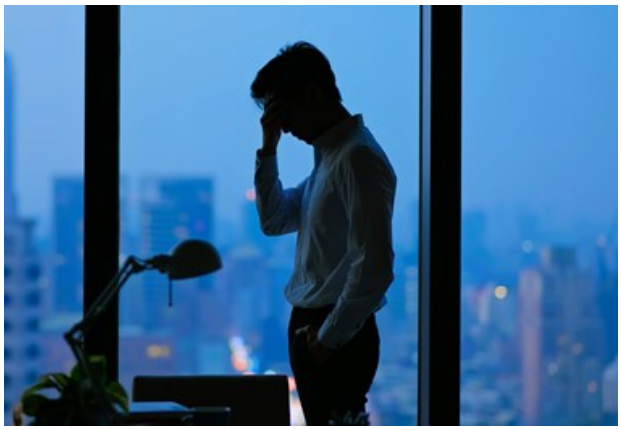
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LEGAL PRACTICE



Mental health and fitness to practise in Queensland: regulatory risks and practical guidance for lawyers

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Questions about a practitioner's mental fitness are arising with increasing frequency in Queensland's regulatory environment. For lawyers and law firms, the issue is not simply one of health - it carries real regulatory risk, including conditions on practise, disciplinary action, and reputational harm. Understanding how Queensland's regulatory bodies approach these issues, and acting early, can make a significant difference to the outcome.

We are increasingly advising practitioners and firms in circumstances where mental health concerns intersect with regulatory obligations. While mental health concerns do not of themselves preclude practise, they may become relevant where they bear upon a practitioner's ability to meet the "inherent requirements of legal practice".

In practise, the concept operates within a broader statutory and disciplinary framework, including oversight by the Queensland Law Society, potentially the Legal Services Commission, and judicial determinations of suitability. Its application reflects a balance between two competing considerations: the protection of the public and the support of practitioners to safely continue practising where appropriate.

The legal framework and key principles: what are the "inherent requirements of legal practice" in Queensland?

The notion of "inherent requirements of legal practice" has been considered in Queensland Civil and Administrative Tribunal decisions, most notably Doolan v Legal Practitioners Admissions Board [2016] QCAT 98. In that matter, Carmody J described the concept as extending beyond technical competence to encompass a broad range of professional attributes.

These include not only mental balance and emotional stability, but also honesty, candour, competence, discretion, integrity, trustworthiness, reliability, sound judgment and the capacity to maintain effective lawyer–client relationships. A practitioner must be able to take responsibility for meeting a client's needs competently and diligently.

Similarly, in Pope v Bar Association of Queensland [2016] QCAT 311, the Tribunal emphasised attributes such as probity, consistency, diligence, prudence, self-discipline and practical wisdom as integral to legal practice.

Taken together, these authorities make clear that the assessment of fitness is holistic. It is directed not simply to whether a practitioner can perform discrete legal tasks, but whether they can consistently and reliably discharge the ethical and professional obligations inherent in the role.

When does a mental health condition affect fitness to practise?

Mental illness becomes legally relevant when it affects, or has the potential to affect, a practitioner's capacity to satisfy these inherent requirements.

Importantly, not all mental health conditions will engage regulatory scrutiny. The relevant inquiry is functional: whether the practitioner is presently able to carry out the inherent requirements of practice to an acceptable standard.

The regulatory framework recognises that many practitioners manage mental health conditions while practising competently. The Queensland Law Society's Mental Health Policy reflects that position. Intervention is typically only warranted where there are reasonable grounds to conclude that the practitioner's capacity is impaired in a way that poses a risk to clients, the administration of justice, or public confidence in the profession.

Conditional practise and medical evidence - what to expect

Disciplinary decisions, in the legal practitioner context, illustrate how mental health issues may be addressed within the disciplinary system. In such matters, QCAT frequently considers psychiatric evidence directed to the practitioner's mental condition and its effect on the practitioner's ability to engage in legal practise.

Frequently, where substantiated unsatisfactory professional conduct or professional misconduct can be linked to the existence of a genuine health condition, outcomes which do not involve the removal from legal practice can be achieved. This is particularly so where the practitioner can demonstrate genuine insight into the impacts of their condition and compliance with treatment. In such circumstances, powerful submissions can be made to instead mitigate future risk through the imposition of conditions on the practitioner's practising certificate, such as engagement with health practitioners, treatment plans and mentoring arrangements.

Such decisions demonstrate that regulatory responses should be calibrated to manage risk, rather than to punish or necessarily exclude practitioners from the profession.

Practical implications for Queensland lawyers and law firms

For individual practitioners

For practitioners, the key issue is whether a mental health condition affects the ability to discharge professional responsibilities in a consistent and reliable way.

Where concerns arise, engagement with appropriate medical treatment and early legal advice are critical. Practitioners should be aware that regulatory bodies may require independent medical assessments and may impose conditions on practise where necessary to address risk.

Importantly, transparency and cooperation with regulatory processes often influence outcomes. Attempts to avoid scrutiny or minimise concerns may exacerbate regulatory risk.

That said, before the Queensland Law Society imposes conditions upon a practitioner they will have the opportunity to provide submissions as to the proposed course. In appropriate circumstances robust submissions can and should be made in support of the practitioner's position.

For firms and employers

Firms and supervising practitioners face direct and, in some cases, competing obligations — to the practitioner, to clients, and to the court. They must ensure that work is performed competently and that appropriate supervision structures are in place.

Where concerns about a practitioner's capacity emerge, firms must balance their duties to the individual with their obligations to clients and the court. This may involve:

- implementing supervision or mentoring arrangements;
- adjusting workloads or responsibilities; and
- facilitating access to appropriate medical or professional support.

The circumstances are further complicated by the overlay of employers' work health safety duties.

In practise, delay or informal handling of such issues presents as a source of regulatory exposure for firms.

For regulators

For regulators, including the Queensland Law Society and Legal Services Commission, the primary focus remains on public protection.

Regulatory intervention is generally directed at managing risk through proportionate measures. This may include requiring health assessments, imposing conditions on practising certificates, or, in more serious cases, pursuing disciplinary proceedings.

At the same time, regulatory frameworks should recognise the importance of supporting practitioners to continue practising where it is safe to do so.

Strategic insights

Where does the regulatory risk lie?

The principal risk area lies in the intersection between fluctuating mental health conditions and the ongoing demands of legal practice.

Issues may arise where:

- symptoms affect judgment, reliability or communication;
- there is inconsistency in performance over time; or
- there is a deterioration in the practitioner–client relationship.

Because the test is functional and forward-looking, the presence of a diagnosis is less important than its practical impact. This can create uncertainty, particularly where conditions are episodic or variable.

Common pitfalls to avoid

A number of recurring issues can be identified in regulatory matters involving mental health:

- Delay in seeking assistance: practitioners may continue practising despite declining capacity, increasing the risk of client harm.
- Lack of objective evidence: failure to obtain appropriate medical reports can hinder the resolution of regulatory concerns.
- Insufficient supervision or support: particularly in smaller practices, where informal structures may not adequately address emerging risks.

These issues frequently lead to regulatory intervention that might otherwise have been avoided. In many cases, the regulatory issue is not the underlying condition, but the way it is managed.

When should a lawyer seek legal advice?

Legal advice should be considered at an early stage where:

- a practitioner receives correspondence or other contact from a regulatory body raising concerns;
- there is a requirement to provide medical evidence or undergo an assessment; or
- a show cause notice is received, or practising conditions are proposed or imposed.

Early engagement allows for a structured response, including the coordination of appropriate medical evidence and the development of a strategy to address regulatory concerns.

Key takeaways for Queensland lawyers and law firms

Mental fitness forms an integral component of the inherent requirements of legal practice. While mental health conditions do not automatically preclude practise, they may engage regulatory scrutiny where they affect a practitioner's capacity to meet professional obligations.

The governing framework is ultimately directed towards public protection, but it also accommodates flexible, proportionate responses designed to support practitioners to continue practising safely. In practise, outcomes are frequently determined by how early and effectively issues are identified and managed.

For practitioners and firms, the key is therefore early recognition of issues. Proactive and structured engagement - both medically and legally - is often critical to achieving a proportionate and workable outcome and avoiding escalation.

If you are a practitioner or firm in Queensland facing regulatory concerns about mental fitness to practise, early legal advice can be critical. Contact Gilshenan &Luton's Brisbane team to discuss your situation in confidence.

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