Good Intentions, Mixed Messages: Considering Mental Health In Attorney Discipline

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Abstract: The legal profession urges struggling lawyers to seek help—but what happens when those same lawyers become the subject of discipline? As mental health challenges among lawyers become more widely acknowledged and understood, the disciplinary systems that govern the profession remain uneven and opaque in their treatment of mental health as a mitigating factor. This Article presents the first comprehensive review of over a decade of disciplinary decisions and admonitions in Massachusetts, focusing on how mental health is considered during sanctioning and whether current standards meaningfully reflect the profession's stated commitments to fairness, public protection, and attorney well-being.

The analysis reveals that mental health mitigation is marked by deep ambiguity and inconsistent application. Central to the confusion is the requirement that attorneys demonstrate a "causal and temporal" connection between their condition and the misconduct, as well as some form of successful treatment or recovery—standards that often assume a neat narrative of decline, diagnosis, treatment, and recovery. Yet for many attorneys, mental health conditions are chronic, cyclical, or resistant to linear resolution. Those who were actively in treatment at the time of misconduct—or whose recovery does not fit a prescribed model—are often left navigating unclear or even contradictory expectations. Is recovery required for mitigation? And if so, what counts as "recovery"? Is it symptom alleviation, responsible engagement with treatment, or something more? Massachusetts case law references all three, from the "alleviation of symptoms" standard in Roper, to the "responsible addressing" language of the Massachusetts Bar Discipline Manual, to the American Bar Association's requirement of "demonstrated rehabilitation." These inconsistent standards not only confuse but constrain: they risk turning recovery into a gatekeeping device rather than a path toward reform.

These inconsistent and unclear standards also pose challenges for disciplinary bodies. These uncertainties matter—not just for individual fairness, but for the legitimacy and integrity of the disciplinary system itself. Vague or rigid standards for causation and recovery introduce procedural unfairness, discourage help-seeking, and reinforce stigma by penalizing those whose conditions defy easy resolution. While disciplinary boards may understandably hesitate to adopt more detailed guidance due to the complexity of mental illness, this Article argues that such complexity demands clarity, not avoidance. In the absence of transparent and flexible standards, ambiguity risks becoming its own form of punishment or deterrence.

The Article concludes by exploring possible reforms aimed at building a more just and coherent system—one that clarifies evidentiary expectations, recognizes the realities of chronic and episodic conditions, and better integrates the expertise of medical and mental health professionals. If the profession genuinely seeks to promote lawyer well-being, its regulatory structures must reflect that commitment—not just in rhetoric, but in rules. At a time when the profession urges lawyers to seek help, our regulatory systems must be evaluated to ensure they do not punish those who do.

I. INTRODUCTION

When an attorney engages in misconduct, the harm may be quickly evident—missing funds, a loss of client trust, or damage to the attorney's reputation. However, once the attorney appears before a disciplinary board, harm is only one consideration in assessing the appropriate sanction—there is also the question of cause. What led to the misconduct, could it have been avoided, and, most importantly, what is the likelihood it will be repeated? The question of how to regulate lawyers is one of professional standards and public perception, firm culture, and the norms of practice, but it is also highly individual—what happened in that single lawyer's life that led them to risk years of legal education, hard work, and the possibility of suspension or disbarment?

Recently, disciplinary bodies have begun to incorporate mental health considerations into their inquiries, seeking to better understand a lawyer's motivations, lapses in judgment, and damaging decisions. These inquiries arise from a dual concern: the regulation of attorneys to protect the public, and a growing awareness of the mental health challenges that have long plagued the legal profession. Efforts to reduce stigma around mental health treatment and improve lawyer well-being have primarily focused on two areas: reforms to the character and fitness process for bar admission and increasing law school support for students who may be struggling. Less attention has been given, however, to how attorney mental health is considered in disciplinary proceedings.[2] This gap may be due in part to the tension between caring for attorneys' mental health and ensuring public protection, as well as concerns about privacy and overreach, and lingering uncertainty over the strength of the connection between attorney misconduct and mental health struggles.

One frequently cited statistic claims that between 40 to 70% of disciplinary proceedings "are linked" to substance use or mental illness.[3]

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[2] Gratitude and acknowledgment are due to the scholars and advocates whose work has addressed the intersection of attorney mental health, law school and practice culture, and disciplinary systems. This article builds on the insights of many, including those cited throughout, as well as Nicholas D. Lawson, *To Be a Good Lawyer, One Has to Be a Healthy Lawyer*, 35 GEO. J. L. ETHICS 65 (2022); Alex B. Long, *What the Lawyer Well-Being Movement Could Learn from the Americans with Disabilities Act*, 63 WM. & MARY L. REV. 63 (2022); Bernice Donald & Alex Bransford, *Widening the Lens, Sharpening the Focus: Mental Health and the Legal Profession*, 89 FORDHAM L. REV. 2497 (2021); Len Klingen, *The Mentally Ill Attorney*, 27 NOVA L. REV. 157 (2002); Daniel L. Skoler & Roger M. Klein, *Mental Disability and Lawyer Discipline*, 12 J. MARSHALL J. PRAC. & PROC. 227 (1979); SUSAN S. DAICOFF, LAWYER, KNOW THYSELF, (Bruce D. Sales et al. eds., 2004); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999).

[3] *See* BREE BUCHANAN & JAMES C. COYLE, NAT'L TASK FORCE ON LAW. WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 8 (2017) (citing DOUGLAS B. MARLOWE, STRESS MANAGEMENT FOR LAWYERS: HOW TO INCREASE PERSONAL & PROFESSIONAL SATISFACTION IN THE LAW 104–30 (Amiram Elwork

However, there is rightful skepticism about this claim, specifically concerning the distinction between the mere presence of mental health challenges in an attorney's life and whether mental health struggles actually caused the misconduct. Without clear standards, disciplinary bodies are left to determine the role of mental health in each case with little guidance, leading to inconsistencies in outcomes and the risk of bias. It is a challenging task for disciplinary bodies, a charge to both recognize how mental health conditions can impair judgment or behavior and how proper treatment and support structures can mitigate that impact.[4]

With mental health diagnoses on the rise among both the general public and law students,[5] as well as increasing efforts to destigmatize mental health concerns,[6] now is the time to examine how disciplinary bodies incorporate mental health considerations and whether these efforts are achieving their stated goals. At present, approaches to mental health in attorney discipline vary widely on a state-by-state basis, with some jurisdictions treating mental health as a mitigating factor when specific criteria is met, and others remaining hesitant to consider it at all.

This Article seeks to fill that gap by conducting a review of how mental health has been treated as a mitigating factor in attorney discipline in one jurisdiction—Massachusetts—over the past decade. First, the Article provides an overview of the standard for attorney discipline and sanctions in Massachusetts, including what factors are considered mitigating. The Massachusetts Board of Bar Overseers (BBO) and the Supreme Judicial Court (SJC) distinguish between "typical" mitigating factors, which generally do not warrant a reduction in sanction, and "special" mitigating factors, which may justify a departure from the standard sanction in similar cases.[7]

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ed., 2nd 1997) (describing the physical and mental health challenges associated with the legal profession).

[4] *See generally* Laura Rothstein, *Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*, 69 U. PITT. L. REV. 531 (2008) (examining the legal and ethical tension between protecting the public and accommodating mental health conditions in the regulation of law students and attorneys).

[5] *See generally* sources cited *supra* note 2.

[6] Bree Buchanan & James C. Coyle, *Mental Health and Substance Use in the Legal Profession*, 66 JUDGES' J. 36, 37 (2019); AM. BAR ASS'N, *Commission on Lawyer Assistance Programs*, https://www.americanbar.org/groups/lawyer_assistance [https://perma.cc/KJ69-TS2D] (promoting destigmatization through education, outreach, and confidential support services).

[7] *See* MASS. BD. OF BAR OVERSEERS OF THE SUP. JUD. CT., MASSACHUSETTS BAR DISCIPLINE: HISTORY, PRACTICE, AND PROCEDURE 393–94 (2018) [hereinafter MBD] (explaining that special factors may serve as mitigating factors). This section notes that "typical" mitigating factors generally do not reduce sanctions, while "special" mitigating factors—such as

Among these special factors is mental health, but it is difficult to assess whether its application has been consistent. The guidance provided by case law and training materials requires a "causal and temporal" link between the mental health condition and the misconduct, as well as a vague discussion of treatment, leaving substantial discretion to disciplinary bodies.[8]

This Article uses Massachusetts as a case study, analyzing over 1,300 disciplinary decisions and admonitions from 2014 to 2024 to examine how mental health is considered in sanction mitigation. It categorizes cases by the asserted mental health condition, examines how courts evaluate the causal link between mental health and misconduct, and explores interpretations of treatment as a prerequisite for mitigation.[9] Patterns and inconsistencies emerge—for instance, whether attorneys already in treatment during misconduct are viewed less favorably than those who seek treatment after the misconduct occurs. Additionally, misconduct involving dishonesty or client harm appears less likely to be mitigated by mental health than, for instance, missed deadlines, which raises questions about how intent and impairment are weighed.[10] The findings reveal a patchwork of outcomes—sometimes mental health struggles result in greater leniency, while other times they are discounted—highlighting complex issues of fairness, consistency, and public protection.

Finally, the Article turns to broader questions about the purpose of attorney discipline and whether existing practices align with the stated goals of public protection and professional accountability. This section briefly examines ongoing debates over whether mental health and well-being should be incorporated into the American Bar Association (ABA) Model Rules of Professional Conduct, as some have proposed. It also considers potential reforms, including clearer guidelines for state disciplinary committees on when and how to consider mental health as a mitigating factor. Any such framework must balance the need for fairness in attorney discipline with the practical reality that disciplinary bodies are composed primarily of legal professionals, not medical experts, while recognizing the highly variable—and not always linear—path of mental health treatment.

This Article comes at a crucial moment, as the legal profession grapples with the implications of the ongoing mental health crisis among lawyers. If

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inexperience, self-reporting, or significant mental health challenges—may warrant a departure from standard sanctions. *Id.*

[8] *See id.* at 396–98 (outlining requirements necessary for consideration of mental health as a mitigating factor). This section explains that an attorney who raises mental health as a mitigating factor must establish that their condition was "causally related to the misconduct" and that they have established "successful treatment for the condition." *Id.*

[9] *See id.*

[10] *See, e.g.*, *In re* Sharif, 945 N.E.2d 922, 932 (Mass. 2011) (declining to treat the respondent's depression as a mitigating factor where misconduct involved dishonesty and knowing misuse of client funds, and where the mental health condition was not shown to have caused the misconduct).

disciplinary processes fail to account for mental health in a fair and consistent manner, they risk exacerbating stigma, discouraging attorneys from seeking treatment, and applying sanctions that neither protect the public nor rehabilitate the attorney. By examining a decade of Massachusetts disciplinary decisions, this Article seeks to contribute to the growing conversation on how mental health should be integrated into the regulation of the legal profession—ensuring that attorneys are held accountable for their actions while also acknowledging the realities of mental health and recovery.

II. SANCTIONS IN ATTORNEY DISCIPLINE

Once a disciplinary body determines that an attorney has engaged in misconduct, it must determine the appropriate sanction. Sanctions serve multiple, sometimes overlapping purposes: to address the misconduct, to maintain public trust in the legal profession, and to ensure that the attorney is held accountable.[11] Sanctions are typically categorized into three broad types: incapacitating sanctions, sanctions that express disapproval, and sanctions aimed at rehabilitation.[12]

Incapacitating sanctions, such as disbarment and suspension, remove or restrict an attorney's ability to practice law.[13] These sanctions are generally reserved for the most serious violations—that is, those involving dishonesty, criminal conduct, or significant harm to clients or the public.[14] Second, sanctions that express disapproval, such as public censure or probation, serve to formally mark the attorney's conduct as unacceptable while allowing them to continue practicing law under supervision or with specific conditions.[15] Finally, rehabilitative sanctions aim to address underlying causes of misconduct, such as mental health issues or substance use. This category includes voluntary agreements to pursue treatment or participate in

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[11] *See generally* STANDARDS FOR IMPOSING LAWYER SANCTIONS §§ 1.1, 9.1 (AM. BAR ASS'N 1986) (amended 1992); *See also* MBD, *supra* note 7.

[12] *See* MBD, *supra* note 7, at 35–39 (explaining that once misconduct is found, sanctions are imposed to address the misconduct, protect the public, and preserve trust in the legal profession; possible outcomes include disbarment, suspension, public reprimand, probation, and remedial measures such as treatment or trust account monitoring).

[13] Leslie C. Levin & Susan Saab Fortney, *"They Don't Know What They Don't Know": A Study of Diversion in Lieu of Lawyer Discipline*, 36 GEO. J. OF LEGAL ETHICS 309, 312 (2023). Due to the severity of this type of sanction, in Massachusetts, only the court may suspend or disbar a lawyer. MBD, *supra* note 7, at 30.

[14] *See id.* at 387 (explaining that incapacitating sanctions such as disbarment and suspension are intended to prevent attorneys from continuing to practice when they pose a threat to clients or the public, particularly in cases involving dishonesty, criminal conduct, or significant harm).

[15] *See id.* at 38–39, 294.

monitoring programs intended to support the attorney's recovery and prevent recurrence.[16] In Massachusetts, this may also include admonitions, which are anonymous.[17] While these categories are conceptually distinct, in practice the boundaries between them often blur. A sanction may simultaneously punish, rehabilitate, *and* protect the public, reflecting the complex and sometimes conflicting goals of the disciplinary system.

Although the Model Rules of Professional Conduct establish the model for state-specific ethical obligations attorneys must follow, they do not offer detailed guidance on appropriate sanctions for specific violations. To address this gap, the ABA Standing Committee on Professional Discipline developed the Standards for Imposing Lawyer Sanctions ("Standards"), which identify a set of factors disciplinary bodies should consider in determining the appropriate sanction.[18] These factors aim to provide consistency across jurisdictions and between matters, while allowing flexibility based on the circumstances of each case. Specifically, the Standards direct disciplinary authorities to evaluate the following when considering sanctions:

- The duty violated: Was the violation a breach of duty to a client, the public, the legal system, or the profession itself?
- The lawyer's mental state: Did the attorney act intentionally, knowingly, or negligently?
- The extent of harm: What was the actual or potential injury caused by the misconduct? How serious was the harm to clients, the public, or the profession?
- Aggravating and mitigating factors: Are there circumstances that should increase or reduce the severity of the sanction?[19]

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[16] *See id.* at 20, 126 (explaining that rehabilitative sanctions are designed to address underlying issues contributing to misconduct, such as mental health or substance abuse, and may include treatment agreements that help attorneys resolve the causes of their misconduct and maintain competence to practice).

[17] *See generally* Jon J. Lee, *Private Sanctions, Public Harm?*, 48 BYU L. REV. 1255 (2023) (critiquing the use of anonymous attorney discipline, including admonitions, for obscuring patterns of professional misconduct and weakening the transparency and deterrent value of the disciplinary system).

[18] *See* STANDARDS FOR IMPOSING LAWYER SANCTIONS § 3.0 (AM. BAR ASS'N 1986) (amended 1992) (listing the four central factors disciplinary authorities should evaluate when determining sanctions: duty violated, lawyer's mental state, actual or potential injury, and aggravating or mitigating factors).

[19] *See In re* Schoepfer, 687 N.E.2d 391, 394 (Mass. 1997) (reaffirming application of the standards set forth in *In re* Discipline of an Att'y, 468 N.E.2d 256, 261–62 (Mass. 1984), and noting that mitigating factors may warrant departure from presumptive sanctions); STANDARDS FOR IMPOSING LAWYER SANCTIONS § 3.0 (AM. BAR ASS'N 1986) (amended 1992) (listing four factors for assessing sanctions: the duty violated, the lawyer's mental state, the actual or potential injury caused, and the presence of aggravating or mitigating circumstances).

Although these factors offer a structured framework, they leave substantial room for discretion—particularly in how mitigating evidence, such as mental health struggles, is evaluated. The Standards provide guidance on mitigating factors that may warrant a reduction in the severity of a sanction. [20] Among these is the consideration of "mental disability" (sometimes referred to as "mental impairment").[21] To qualify as a mitigating factor under the Standards, "mental disability" must be supported by medical evidence establishing four elements:

- The respondent suffers from a mental disability;
- The disability caused or contributed to the misconduct;
- The respondent has made meaningful progress in their recovery, demonstrated by a sustained period of successful rehabilitation; and
- The recovery is sufficient to suggest that the misconduct is unlikely to recur.[22]

These criteria are intended to ensure that attorneys are not unduly punished for conduct significantly influenced by a treatable mental health

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[20] *See* STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32 (AM. BAR ASS'N 1986) (amended 1992) (listing mitigating factors including absence of a prior disciplinary record, personal or emotional problems, and mental disability).

[21] *See* MODEL RULES FOR LAW. DISCIPLINARY ENF'T r. 10 (AM. BAR ASS'N 2020) (listing "mental disability" as a mitigating factor in disciplinary sanctions); *see also* U.S. SOC. SEC. ADMIN., *Disability Evaluation Under Social Security: § 12.00 Mental Disorders—Adult* (2017), https://www.ssa.gov/disability/professionals/bluebook/12.00-MentalDisorders-Adult.htm [https://perma.cc/GL8J-NM64] (defining mental disorders through eleven diagnostic categories and describing medical criteria used to evaluate cognitive, behavioral, and functional impairments); WORLD HEALTH ORG., *Mental Disorders Fact Sheet* (June 8, 2022), https://www.who.int/news-room/fact-sheets/detail/mental-disorders [https://perma.cc/WX9D-FLTD] (explaining that "mental disorder" refers to clinically significant disturbances in cognition, emotional regulation, or behavior and is often used interchangeably with "mental health condition," though the latter is broader); NAT'L ALL. ON MENTAL ILLNESS, *Mental Health Conditions*, https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions [https://perma.cc/KBU7-MSGA] (cataloging specific mental health diagnoses and their varying symptoms and impact). The terminology used in the legal discipline context—including "mental disability," "mental impairment," and "mental health condition"—has not been applied consistently across time or jurisdictions. These inconsistencies reflect both evolving norms in clinical and disability language, and ambiguity in how disciplinary systems understand the relationship between a diagnosis, capacity, and culpability.

[22] *See* STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32 (AM. BAR ASS'N 1986) (amended 1992) (listing mental disability or chemical dependency as mitigating factors when supported by medical evidence); *see also* Judith M. Rush, *Disbarment of Impaired Lawyers: Making the Sanction Fit the Crime*, 37 WM. MITCHELL L. REV. 916, 929 (2011) (summarizing the four-part test for mental disability mitigation).

condition. Yet even with these formal requirements, the application of the Standards remains highly discretionary, often turning on the particular facts of the case and the quality and persuasiveness of the evidence presented regarding the attorney's condition and recovery.[23]

The ABA's approach to mental impairment mitigation sets a widely recognized benchmark; however, each jurisdiction adapts these standards within its own procedural and doctrinal framework. The next section closely examines Massachusetts's approach, starting with how its disciplinary bodies evaluate sanctions once misconduct has been established.

A. Sanctions in Massachusetts

In Massachusetts, once misconduct has been established, the Board of Bar Overseers (BBO) and the Supreme Judicial Court (SJC) consider both mitigating and aggravating factors to determine the appropriate sanction. A lawyer found to have violated the Massachusetts Rules of Professional Conduct will receive a sanction that reflects not only the nature of the misconduct but also the surrounding circumstances and relevant factors.[24] In determining the appropriate sanction, the disciplinary bodies ensure that the punishment is proportional to the severity of the violation, while also considering the lawyer's personal circumstances and any steps they have taken toward rehabilitation.

Sanctions are applied with careful consideration of the totality of the circumstances, and the disciplinary body must ensure that the sanctions imposed are consistent with those typically applied in similar cases. As the SJC noted in the *Matter of McInerney*, "markedly disparate from those ordinarily entered by the various single justices in similar cases."[25] This principle reflects the need for consistency in disciplinary actions while still allowing for flexibility in individual cases. Each attorney must receive the disposition most appropriate to the facts at hand, ensuring fairness and a tailored response to the misconduct.[26]

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[23] STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32 (AM. BAR ASS'N 1986) (amended 1992) (requiring proof of mental disability, causation, and sustained recovery for mitigation); *see also* MODEL RULES OF PRO. CONDUCT r. 1.1, 1.3, 1.4, 1.16 (AM. BAR ASS'N 2023) (outlining obligations regarding competence, diligence, communication, and withdrawal from representation that may be implicated when mental health affects lawyering).

[24] *See* MBD, *supra* note 7, at 387 (explaining that disciplinary authorities consider both mitigating and aggravating factors when imposing sanctions to ensure the outcome is appropriate to the nature of the misconduct and the specific circumstances of the case); *see also id.* at 393–94 (noting that each case must be decided on its own merits, and that aggravating and mitigating factors help determine whether a sanction should be increased or reduced accordingly).

[25] *See In re* McInerney, 451 N.E.2d 401, 402 (Mass. 1983) (quoting *In re* Alter, 448 N.E.2d 1262, 1263 (Mass. 1983)).

[26] *See* MBD, *supra* note 7, at 387 (citing *In re* Hurley, 639 N.E.2d 705 (Mass. 1994), *cert. denied*, 514 U.S. 1036 (1995)).

When assessing the severity of sanctions, the SJC and BBO carefully weigh both aggravating and mitigating factors. Aggravating factors may include the seriousness of the violation, prior disciplinary history, or the level of harm caused. On the other hand, mitigating factors—such as mental health issues, family circumstances, or efforts to make amends—can lead to a less severe sanction. The presence of mental health challenges, specifically, may be considered where they contributed to the misconduct, and if the attorney can demonstrate that they have sought treatment and taken steps toward recovery.[27]

B. Mitigating Factors in Massachusetts

In Massachusetts, when an attorney facing discipline wishes to raise factors in mitigation, they must do so in their Answer to the Petition for Discipline, or those factors will be deemed waived.[28] Under the BBO Rules, specifically Section 3.15(f), failure to include mitigating facts in the initial response constitutes a waiver of the right to present such evidence later.[29] This rule underscores the importance of promptly raising mitigating factors, as failure to do so may forfeit the opportunity to have them considered.

According to BBO Rule 3.28, Bar Counsel carries the burden of proof by a preponderance of the evidence.[30] However, when it comes to matters of mitigation, the burden shifts to the respondent. The attorney-respondent must prove affirmative defenses and mitigating factors, again, by a preponderance of the evidence.[31] A mitigating factor is one that is causally related to the misconduct and "may justify 'a departure from the standard

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[27] *See id.* at 387–88 (explaining that the SJC and BBO must consider both aggravating and mitigating factors in determining sanctions); *see also id.* at 388–89 (noting that mitigating factors such as mental health are considered when properly presented and supported by evidence, especially when the condition contributed to the misconduct and recovery has been demonstrated).

[28] *See* RULES OF THE BD. OF BAR OVERSEERS § 3.15(f) (2024) (providing that failure to include facts in mitigation in the respondent's answer constitutes a waiver of the right to present evidence on those facts); *see* MBD, *supra* note 7, at 407–10 (comprehensively detailing procedural requirements for mitigating and aggravating claims); Richard P. Campbell & Suzanne Elovecky, *Understanding Our Disciplinary System*, 24 MASS. LAWS. J. 1, 20 (2017) ("The answer to the petition must set forth in detail any facts and circumstances 'in mitigation.' 'Failure to include facts in mitigation constitutes a waiver of the right to present evidence of those facts.'" (quoting RULES OF THE BD. OF BAR OVERSEERS § 3.15(f) (2024)).

[29] *See* RULES OF THE BD. OF BAR OVERSEERS § 3.15(f); *see also* MBD, *supra* note 7, at 394; *In re* Patch, 997 N.E.2d 425, 428 (2013).

[30] *See* RULES OF THE BD. OF BAR OVERSEERS § 3.28; *In re* Balliro, 899 N.E.2d 794, 801 (2009) (stating that the bar counsel has the burden to prove misconduct).

[31] *See* RULES OF THE BD. OF BAR OVERSEERS § 3.28 (2024).

discipline' for the respondent's misconduct."[32] The causal relationship between the misconduct and the mitigating factor is crucial; mitigating factors will only be considered if they are found to have caused the misconduct.[33]

The SJC has highlighted the importance of proving this causal link, particularly when mental health issues are presented as a mitigating factor. For example, in *Matter of Corbett*, the court rejected the respondent's argument that "certain psychological conditions contributed to his misconduct" agreeing with the hearing committee's conclusion declining "to credit evidence supporting the requisite causal nexus between respondent's intentional misconduct and any psychological condition," where "credible evidence fail[ed] to establish that his psychological condition was a 'substantial contributing cause' of the misconduct."[34]

"Typical" mitigating factors are those which may be considered by the court but generally do not lead to a reduction in the severity of the sanction.[35] These factors often do not lessen the penalty unless they are accompanied by other factors that strongly suggest a reduced degree of culpability.[36] Typical factors include an otherwise excellent reputation in the community, cooperation with the disciplinary process, and the absence of harm caused by the misconduct. The SJC has ruled that these factors typically have a limited

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[32] *See* MBD, *supra* note 7, at 388 (internal citations omitted).

[33] *See id.* at 296 (citing *In re* Johnson, 827 N.E.2d 206, 209 (Mass. 2005)).

> To serve as special mitigation, the stresses must be causally related to the misconduct. In [*In re*] Johnson, the SJC concluded that they were not. As the Court wrote: The panel of the board that heard the respondent's evidence specifically concluded that [Johnson] had not demonstrated a causal relationship between his circumstances and his misconduct.

Id.

[34] *See In re* Corbett, 84 N.E.3d 837, 841 (Mass. 2017) (rejecting mitigation where "credible evidence fail[ed] to establish that [attorney's] psychological condition was a 'substantial contributing cause'" of the misconduct); *see also In re* Zankowski, 164 N.E.3d 898, 908 (Mass. 2021) (rejecting mitigation where "there was no medical testimony or other evidence connecting in any causal manner" attorney's stress to misconduct); *In re* Ring, 692 N.E.2d 35, 38 (Mass. 1998) (crediting depression as mitigating where causally related to misconduct); *In re* Schoepfer, 687 N.E.2d 391, 394 (Mass. 1997) ("If a disability caused a lawyer's conduct, the discipline should be moderated . . . .").

[35] *See* STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32 (AM. BAR ASS'N 1986) (amended 1992) (listing typical mitigating factors such as absence of prior discipline, personal or emotional problems, and remorse); *see also id.* § 2.3 cmt. (noting that mitigating circumstances may reduce the severity of a sanction but do not guarantee it).

[36] *See id.* § 9.31 (explaining that mitigating circumstances "may justify a reduction in the degree of discipline to be imposed," but only when they sufficiently offset the seriousness of the misconduct); *see also id.* § 9.32 (listing common mitigating factors, including absence of prior discipline, personal or emotional problems, and remorse).

impact on the final sanction, largely because they are expected of all attorneys and thus do not warrant a reduction in the severity of sanctions.[37]

In contrast, "special" mitigating factors can significantly reduce the severity of a sanction. These factors are typically associated with circumstances that suggest the misconduct was not entirely within the attorney's control or that the attorney is less culpable than the misconduct might otherwise imply.[38] Special mitigating factors may include inexperience, addiction, and significant mental health challenges.[39] These factors are considered to potentially warrant a departure from the presumed sanction, allowing for a more lenient penalty in recognition of the underlying issues that contributed to the misconduct.[40]

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[37] *See In re* Alter, 448 N.E.2d 1262, 1264 (Mass. 1983).

> [T]ypical mitigating circumstances [are] as follows: (1) an otherwise excellent reputation in the community and a satisfactory record at the Bar, (2) cooperation in the disciplinary proceeding and with governmental authorities, (3) the occurrence of the criminal proceedings, (4) the pressures of practice, (5) the conviction as a punishment, (6) the absence of any dishonesty, such as a false tax return, and (7) in the final result, no harm to anyone else by the misconduct[.]

In re Saab, 547 N.E.2d 919, 926 (Mass. 1989) (internal citations omitted).

> While mitigating evidence has played an important role in some of our cases, 'typical' mitigating evidence such as that offered by the respondent in this case has not been given substantial weight. The fact that the respondent appears to have an excellent reputation in his community and among certain judges and attorneys is not the sort of 'special' mitigating factor to which we have accorded weight, nor is his claim that no harm resulted from his conduct.

MBD, *supra* note 7, at 388–93 (observing that typical mitigating factors may have little impact on the final sanction unless supported by evidence of reduced culpability).

[38] *See* MBD, *supra* note 7, at 393 ("The principle underlying a special mitigating consideration is that it shows that the lawyer who committed misconduct acted unintentionally, had some reason beyond the attorney's voluntary control for engaging in the misconduct, or otherwise was less culpable than the category of misconduct would otherwise imply.").

[39] *See* MBD, *supra* note 7, at 394–97 (2024) (listing inexperience, addiction, mental health challenges, and self-reporting as examples of special mitigating factors that may reduce the severity of sanctions by showing diminished culpability or involuntariness of the misconduct).

[40] *See id.* at 394–401 (explaining that certain "special" mitigating factors may justify departure from a presumptive sanction when underlying causes of misconduct, such as addiction or inexperience, reduce culpability).

III. MENTAL HEALTH AS A MITIGATING FACTOR IN MASSACHUSETTS

The SJC has acknowledged the role that lawyer mental health and—more broadly—well-being[41] play in fitness to practice and the administration of justice. In *Matter of Zankowski*, the SJC recognized that while mental health conditions do not excuse misconduct, they may help explain the underlying reasons for certain actions.[42] The SJC emphasized that "lawyer well-being is connected to competence, ethical behavior, and professionalism," and that promoting lawyer well-being can enhance both individual health and the ethical standing of the legal profession.[43] This acknowledgment reflects a broader understanding of the connection between an attorney's mental health and their professional conduct.

The presence of mental health challenges in an attorney's life may serve as a mitigating factor when determining the appropriate sanctions; however, the presence of mental health issues alone does not absolve an attorney of responsibility for their actions. To be considered in mitigation, the condition must be causally related to the misconduct, and the attorney must demonstrate that they have "attempted to address the problem

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[41] Well-being is a term used broadly, often without a clear definition, and too often deployed to promote individual solutions to systemic problems. *See* Aaron Jarden & Annalise Roache, *What Is Wellbeing?*, 20 INT'L J. ENV'T RSCH. & PUB. HEALTH 5006, 5006–08 (2023) (explaining that well-being lacks a clear, shared definition, varies significantly across disciplines and cultures, and is often used interchangeably with concepts such as mental health, happiness, and life satisfaction, creating confusion in both academic and public discourse); Christian B. Sundquist, *Beyond the 'Resiliency' and 'Grit' Narrative in Legal Education: Race, Class, and Gender Considerations*, 50 J. MARSHALL L. REV. 271, 272–77 (2017) (critiquing how well-being discourse can obscure structural inequality by shifting focus from systemic factors to individual responsibility); Shiv Gautam et al., *Concept of Mental Health and Mental Well-Being, It's Determinants and Coping Strategies*, 66 INDIAN J. PSYCH. 231, 232 (2024) (noting that the term well-being encompasses physical health, nutrition, social relationships, culture, and mental illness, often leading to conflated or superficial applications in policy and care). Despite these limitations, "well-being" has become a central term in legal reform efforts, including by the Massachusetts SJC in the work of the National Task Force, and various state-level initiatives. Its institutional traction, even if conceptually messy, makes it a useful—if imperfect—framework for prompting change within the profession.

[42] *See In re* Zankowski, 164 N.E.3d 898, 910 (Mass. 2021) ("[T]aking steps to promote lawyer well-being, and supporting the lawyers who avail themselves of those measures will surely enhance the physical and mental health of individual lawyers and improve the quality and ethical standing of the profession as a whole.").

[43] *See id.* (recognizing that "lawyer well-being is connected to competence, ethical behavior, and professionalism," and that supporting lawyer well-being can enhance both individual health and the profession's ethical standing); *see also* BUCHANAN & COYLE, *supra* note 3, at 8 (explaining reasons to take action to approve attorney mental health).

responsibly."[44] The SJC has also made it clear that mental health issues can mitigate an attorney's misconduct, but they do not excuse it entirely.[45]

For mental health to be considered a mitigating factor, an attorney must meet several requirements. The attorney must first clearly assert the condition.[46] This assertion must be supported by appropriate evidence, such as medical records or expert testimony.[47] In *Matter of Patch*, the SJC rejected mitigation based on psychological issues observed during the hearing because the condition had not been properly pled, and no medical evidence was presented.[48] When the matter was initially before a single Justice, the Justice found that despite a lack of "evidence, expert or otherwise," after observing the respondent during his 45 minute proceedings, "I could not help but think that he has unresolved emotional issues that in all likelihood contributed to his difficulties" —as a result, the Justice suggested a lesser sanction.[49] However, on review, the SJC rejected this finding, concluding that:

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[44] *See* MBD, *supra* note 7, at 396 (explaining that mental health conditions may be considered in mitigation only if causally related to the misconduct and the attorney has taken responsible steps to address them).

[45] *See generally* MBD, *supra* note 7 (finding that depression could be used as a mitigating factor when considering the length of an attorney's suspension)*; see also In re* Epstein, No. BD-2007-026, 2009 WL 10706820, at *1 (Mass. Bd. Of Bar Overseers Off. of the Bar Counsel July 23, 2009) (considering attorney's opioid addiction as a mitigating factor but still recommending a suspension due to the severity of the misconduct)*; see also In re* Collins, 919 N.E.2d 711, 714 (Mass. 2010) (explaining that while addiction may mitigate misconduct, it does not preclude suspension or disbarment where warranted).

[46] *See* MBD, *supra* note 7, at 396 (noting that mitigation based on mental health requires an affirmative assertion supported by medical evidence); *In re* Patch, 997 N.E.2d 425, 426 (Mass. 2013) (rejecting psychological mitigation where the respondent failed to properly plead the issue or provide supporting medical evidence); *In re* Jones, 681 N.E.2d 265, 267 (Mass. 1997) (declining to credit medical mitigation where the respondent did not submit corroborating records).

[47] *See* MBD, *supra* note 7, at 396–397 (explaining MBD evidence requirement for mitigating factor consideration) ("Of course, a respondent who alleges psychological problems as a basis for mitigation must offer competent evidence of that condition at the hearing, usually including expert testimony.").

[48] *See Patch*, 997 N.E.2d at 426 (rejecting mitigation based on psychological issues where "no evidence, expert or otherwise, was submitted at the hearing to support a claim that his misconduct was mitigated by these issues."). Although the respondent's counsel argued that the attorney had serious emotional difficulties, the single justice noted that mitigation was not properly pled or substantiated through medical records or expert testimony. *Id.* at 427. Nevertheless, the court acknowledged observable signs of distress during oral argument and conditioned reinstatement on addressing these issues. *Id.*

[49] *See id.* (rejecting mitigation based on psychological issues where the respondent's counsel asserted mental health problems but presented "no evidence, expert or otherwise" to support mitigation. Although the single justice ultimately imposed a lesser sanction after personally

> [B]ecause the respondent . . . did not plead psychological issues in mitigation, and did not present any evidence at the hearing—either through his own testimony, through an expert, or otherwise—that any psychological issues caused or contributed to his misconduct, we see no reason not to accept the board's recommended sanction of disbarment.[50]

Second, the attorney must demonstrate that the condition was causally related to the misconduct.[51] The burden is on the respondent to prove this connection.[52] As noted in *Matter of Corbett*, it is the attorney's responsibility to show a causal link between their mental health condition and the misconduct in question.[53] In *Corbett*, the hearing committee not only "declined to credit evidence supporting the . . . causal nexus between respondent's intentional misconduct and any psychological condition," but also held that the respondent's intentional misconduct and misrepresentations were "too calculated and deliberate for [his psychological] disabilities . . . to have had a substantially contributing role."[54]

Notably, within one respondent's own case, the Court may find that mental health challenges mitigated some of the defendant's misconduct but not others. In *Matter of Sharif*, the court found that depression mitigated initial

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observing the respondent's emotional state, the SJC emphasized that such mitigation must be supported by appropriate medical evidence in the disciplinary record).

[50] *Id.* at 427.

> Because the respondent in this case did not plead psychological issues in mitigation, and did not present any evidence at the hearing—either through his own testimony, through an expert, or otherwise—that any psychological issues caused or contributed to his misconduct, we see no reason not to accept the board's recommended sanction of disbarment . . . .

Id. See also In re Eberle, No. BD-2009-048,1, at *1 (Mass. Bd. Of Bar Overseers Off. Of the Bar Counsel Dec. 10, 2009) (explaining that general claims of "disability" without supporting evidence are given no mitigating weight); *In re* Wasserman, No. BD-2007-0020, 2007 WL 9723709, at *3 (Mass. Bd. Of Bar Overseers Off. Of the Bar Counsel May 18, 2007) (noting that no evidence of psychological distress was offered to support a mitigation claim).

[51] *See* MBD, *supra* note 7, at 396 ("To serve as special mitigation, the stresses must be causally related to the

misconduct.").

[52] *Id.*

[53] *See In re* Corbett, 84 N.E.3d 837, 841 (Mass. 2017) ("It was the respondent's obligation to demonstrate a causal connection between the psychological issues and the charged misconduct . . .") (citing *In re* Luongo, 621 N.E.2d 681 (Mass. 1993)).

[54] *Id.* ("It was the respondent's obligation to demonstrate a causal connection between the psychological issues and the charged misconduct . . ."); *see also id.* at 840–41 (noting that the hearing committee "declined to credit evidence supporting the requisite causal nexus between respondent's intentional misconduct and any psychological condition" and that the misconduct was "'too calculated and deliberate for the [psychological] disabilities . . . to have had a substantially contributing role.'").

misconduct involving conduct towards clients and misuse of client funds, but did not mitigate the more severe and intentional misconduct, including false testimony under oath.[55]

Third, to further substantiate a claim for mitigation, the attorney must demonstrate they have attempted to "address the problem responsibly".[56] The ABA Standards for Imposing Lawyer Sanctions go further to require "recovery": in order for "mental disability" to be considered as a mitigating factor, the Standards require a demonstration that "the respondent's recovery from the . . . mental disability [be] demonstrated by a meaningful and sustained period of successful rehabilitation; and . . . the recovery arrested the misconduct and recurrence of that misconduct is unlikely."[57]

Massachusetts disciplinary cases consistently emphasize the importance of treatment or recovery in mitigation assessments of mental health. In the *Matter of Roper*, where the attorney-respondent had offered anxiety and depression as mitigating factors, the Board noted favorably that "the respondent [was] in treatment that [had] alleviated her symptoms."[58] In a separate matter, where one attorney-respondent had no history of discipline and had "obtained treatment" for severe depression, they received an admonition for their misconduct.[59] Perhaps understandably, the Board is more strident in requiring proof of recovery and successful treatment where

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[55] *See In re* Sharif, 945 N.E.2d 922, 926–27, 931–32 (Mass. 2011) (affirming that respondent's depression mitigated some, but not all, of her misconduct). The Court agreed with the board's conclusion that Sharif's depression did not have a "causal nexus" to her intentional misrepresentations—including fabricating a false document and giving false testimony—but did mitigate her other misconduct toward clients, including misuse of client funds. *Id.*

[56] *See* MBD, *supra* note 7, at 396 ("Mental health problems: The fact that a lawyer suffers from a mental health illness may at times serve as a special mitigating factor, but only if the condition causally relates to the misconduct and only if the respondent has attempted to address the problem responsibly."); *see* STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32(i) (AM. BAR. ASS'N 1986) (amended 1992) (listing "mental disability or chemical dependency including alcoholism or drug abuse" as a mitigating factor where the respondent demonstrates: "(1) there is medical evidence that the respondent [has been] affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely").

[57] *See* STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32(i) (AM. BAR ASS'N 1986) (amended 1992).

[58] *See In re* Roper, 32 Mass. Att'y Disc. R. 482, 2 (2016).

[59] *See* MASS. BD. OF BAR OVERSEERS, ADMONITION REP. 1, 7–8 (2014) [hereinafter 2014 ADMONITION REP.].

substance use[60] is in issue, or the attorney is required to seek reinstatement.[61] Thus, Massachusetts jurisprudence sets a standard: attorneys seeking mitigation based on mental health must present evidence of sustained and effective efforts at treatment or rehabilitation, not merely a diagnosis or assertion of emotional distress. Without such evidence, mental health issues alone will not substantially lessen sanctions.

A. "The Condition Asserted"

The first step for an attorney seeking to use mental health as a mitigating factor in disciplinary proceedings is to clearly assert the condition and provide appropriate evidence to support the claim. Between 2014 and 2024, the most commonly asserted conditions in Massachusetts disciplinary decisions were depression, anxiety, and generalized stress or other unspecified mental health challenges.[62]

1. Depression

In a review of the last decade, depression was the most common mental health condition raised in mitigation, and it was frequently cited as either chronic or severe.[63] This is unsurprising, as research shows that depression rates among lawyers are significantly higher than in the general population, with some studies suggesting lawyers experience depression at a rate nearly four times higher than that of the general public.[64] Common symptoms of depression—such as difficulty concentrating, memory issues, poor decision-making, sleep disturbances, and lack of interest in activities—can severely impair an attorney's ability to fulfill their professional duties.[65] The National Institute of Mental Health highlights that depression often causes symptoms

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[60] *See In re* Carney, 32 Mass. Att'y Disc. R. 66, 3 (2016) (noting that although the respondent had a history of alcoholism, the mitigation was given limited weight because he failed to demonstrate a sustained period of sobriety).

[61] *See generally* MBD, *supra* note 7, at 398 (explaining that reinstatement following suspension or disbarment requires not only showing competence and moral fitness, but also sustained recovery where mental health or substance use was implicated in the original misconduct)*; see also* SUP. JUD. CT. r. 4.01 § 18(5) (Mass. Sup. Jud. Ct. 2025) (requiring that reinstatement not be "detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.").

[62] *See supra* Part II (reviewing Massachusetts disciplinary decisions between 2014 and 2024). This conclusion is based on the author's review of these decisions, using publicly available Massachusetts Board of Bar Overseers decisions and admonitions.

[63] Based on the author's review of the BBO's disciplinary decisions and admonitions from 2014–2024, which revealed that depression was the most frequently cited mental health condition raised in mitigation.

[64] *See* Rothstein, *supra* note 4, at 532 (noting that studies have found the rate of depression among lawyers to be nearly four times higher than in the general population).

[65] *Id.* at 531–33.

that may interfere with daily tasks, such as "difficulty concentrating, remembering, or making decisions."[66]

In some cases, depression was found to be persistent, severe, and recurring,[67] or linked to major depressive disorder.[68] Depression was also often raised alongside alcoholism or anxiety as co-occurring conditions that compounded the effects of the attorney's misconduct.[69] In other cases, depression was linked to situational stress, such as family problems, medical issues, or serious personal losses. For instance, in *Admonition No. 14-04*,[70] severe depression was attributed to "serious personal and family problems," and in *Matter of Kachajian*,[71] depression was exacerbated by serious medical conditions. While the timeline of diagnosis was not always explained, in some cases, depression was undiagnosed at the time of misconduct but was later identified.[72]

2. Anxiety and Co-Occurring Mental Health Issues

Anxiety was also frequently cited in Massachusetts disciplinary decisions, although less often than depression. Anxiety has become increasingly prevalent in the United States, particularly among adults under the age of 50, with a notable increase among young adults.[73] Anxiety disorders may present in several ways, commonly involving excessive worry, restlessness, difficulty

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[66] *See* NAT'L INST. OF MENTAL HEALTH, *Brochures and Fact Sheets: Depression*, https://www.nimh.nih.gov/health/publications/depression [https://perma.cc/Y7UK-HN99].

[67] *See In re* Gianacopoulos, 34 Mass. Att'y Disc. R. 130, 3 (2018) (noting "recurring depressive episodes" as a mitigating factor); *In re* Meehan, 33 Mass. Att'y Disc. R. 313, 2 (2017) (describing attorney's "severe depression" as a basis for mitigation).

[68] *See In re* Knight, 40 Mass. Att'y Disc. R. __, 5 (2016) (crediting diagnosis of major depressive disorder as a mitigating factor where the respondent submitted medical evidence and had engaged in treatment).

[69] *See, e.g.*, *In re* Sheehan, 35 Mass. Att'y Disc. R. 551, 2 (2019).

[70] *See* 2014 ADMONITION REP., *supra* note 59.

[71] *See In re* Kachajian, Jr., 33 Mass. Att'y Disc. R. 238, 1 (2017) ("During this period, the respondent was only minimally aware of the balance in his IOLTA account because of numerous health problems and resulting depression.")

[72] *See e.g.*, *In re* Breines, 33 Mass. Att'y Disc. R. 65, 1 (2017) ("[A]t the time of the events in issue the respondent suffered from undiagnosed depression.").

[73] *See* Renee D. Goodwin et al., *Trends in Anxiety Among Adults in the United States, 2008-2018: Rapid Increases Among Young Adults*, 130 J. PSYCH. RSCH. 441, 443 (2020); *see* NAT'L INST. OF MENTAL HEALTH, GENERALIZED ANXIETY DISORDER: WHEN WORRY GETS OUT OF CONTROL (2016).

concentrating, and feelings of nervousness.[74] The symptoms and impact of anxiety disorders may interfere with an attorney's ability to effectively manage their practice in ways similar to depression.

In the cases reviewed, anxiety was often cited alongside depression, with the combined conditions having a significant impact on the attorney's professional performance. In *Matter of Manning*,[75] the attorney cited both major depression and general anxiety disorder as mitigating factors that "negatively impacted and complicated his legal practice."[76] Similarly, *Matter of Roper* illustrates a common pattern where anxiety and depression together contributed to neglecting important responsibilities, such as maintaining malpractice insurance.[77] In these cases, the courts have recognized that the attorneys' mental health conditions impaired their judgment and ability to manage professional obligations.

Occasionally, these symptoms led to—or interacted with—substance use issues.[78] For example, in *Matter of Hess*, the attorney's untreated depression and anxiety prompted self-medication with alcohol during the relevant period.[79] Similarly, in *Matter of Gilpatric*, the attorney's struggles with anxiety and depression, compounded by substance use, were acknowledged as contributing to his difficulties in legal practice.[80] The Hearing Panel explicitly

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[74] *See* AM. PSYCHIATRIC ASS'N, *What are Anxiety Disorders?*, https://www.psychiatry.org/patients-families/anxiety-disorders/what-are-anxiety-disorders [https://perma.cc/X3DZ-UB7H].

[75] *In re* Manning, 39 Mass. Att'y Disc. R. __, 2 (2023).

> [H]e suffered from major depression and had a general anxiety disorder which negatively impacted and complicated his legal practice but was untreated at the time of the events. The respondent voluntarily consulted with Lawyers Concerned for Lawyers and had followed through with their recommendations for continued mental health treatment. The parties explained their agreement to recommend a reinstatement hearing by noting that it was intended to ensure that the respondent's mental health issues were addressed and that he would be fit to resume practice upon readmission.

Id.

[76] *Id.*

[77] *In re* Roper, 32 Mass. Att'y Disc. R. 482, 2 (2016).

[78] This Article uses the term "substance use" rather than "substance abuse" to reflect current medical and ethical guidance emphasizing person-first, non-stigmatizing language; *see* AM. PSYCH. ASS'N, *Substance Use, Abuse, and Addiction*, https://www.apa.org/topics/substance-use-abuse-addiction [https://perma.cc/KPX2-YEUW] (encouraging the use of accurate and respectful terminology such as "substance use disorder" instead of "abuse" or "addict").

[79] *In re* Hess, 39 Mass. Att'y Disc. R. __, 2 (2023) (noting the attorney was "suffering from untreated depression and anxiety and self-medicating with alcohol during the relevant time period.").

[80] *In re* Gilpatric, 39 Mass. Att'y Disc. R. __, 9 (2023).

recognized the complex interplay of factors, clearly articulating the "connections between the petitioner's mental health struggles, his inability to manage stress, his substance use, and his criminal convictions," and calling them "evident to us."[81] The Panel wrote that it was clear that "the petitioner was self-medicating his underlying depression and anxiety, which were exacerbated by his work and relationship stress"; further, "the financial strain caused by his substance use contributed to his criminal misconduct."[82] The relationships among stress, mental health conditions, and substance use are rarely linear and often difficult to disentangle. The Panel's analysis is noteworthy for its willingness to engage seriously with the multifaceted nature of these co-occurring challenges, rather than reducing them to isolated causes.

3. Stress and Unnamed Psychological Conditions

Over the last decade, Massachusetts disciplinary decisions have increasingly recognized stress as a mitigating factor in attorney misconduct. Although stress itself is not classified as a mental health condition, it warrants close attention—both for how it is presented by attorney-respondents and for how it may signal or exacerbate underlying mental health concerns. In many recent cases, stress has been cited when attorneys experience personal or professional pressures that impair their ability to meet professional obligations.

The SJC has explicitly recognized the profound impact of the "relentless pace" of legal practice on attorney well-being, noting that many lawyers struggle to balance the competing demands of their personal and professional lives.[83] In *Matter of Zankowski*, the Court acknowledged the "major issues negatively affecting well-being" in the profession, including the "pure volume of work" and the persistent difficulty lawyers face in maintaining boundaries between work and home life.[84] The SJC's Steering Committee on Lawyer

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[81] *Id.*

[82] *Id.*

[83] *See In re* Zankowski, 164 N.E.3d 898, 916–17 (Mass. 2021) (noting "the relentless pace [of legal practice that] makes it very difficult [to balance] work and the rest of life" as relevant context in evaluating attorney misconduct and potential mitigation) (citing SUP. JUD. CT. STEERING COMM. ON LAW. WELL-BEING, REP. TO THE JUSTICES 1, 8 (2019), https://www.mass.gov/doc/supreme-judicial-court-steering-committee-on-lawyer-well-being-report-to-the-justices/download [https://perma.cc/6ZWW-U74F].

[84] *Id.* at 910; *see also* SUP. JUD. CT. STEERING COMM. ON LAW. WELL-BEING, *supra* note 83, at 2, 8–9 (acknowledging the "major issues negatively affecting well-being within the legal profession", such as the "sheer volume of cases" and the challenge lawyers face in establishing boundaries between work and personal life).

Well-Being further observed that public-sector attorneys—particularly prosecutors—often face intensified stress due to the complexity of their cases and the scrutiny they receive from both the media and the public.[85]

Despite the Court's recognition of the considerable stresses inherent in legal practice, the SJC has consistently maintained that attorneys must uphold the standards of personal integrity expected by the public. Stress, standing alone, is not a defense to misconduct. As emphasized in *Matter of Hilson*, the fundamental duty of an attorney is to maintain personal integrity and comply with legal and ethical obligations, regardless of personal pressures.[86] In practice, however, disciplinary authorities have acknowledged that stress—particularly when it stems from circumstances beyond an attorney's control, such as serious illness or domestic violence—may still be relevant in mitigation, even if stress alone does not rise to the level of a mental health diagnosis.[87]

According to the Massachusetts Bar Discipline Manual, situational stress—such as a health crisis or family emergency—may constitute a special mitigating factor if it is causally linked to the misconduct.[88] This recognition has been reflected in several disciplinary cases. In *Admonition No. 20-03*, an attorney's significant health issues and required surgery interfered with his focus and judgment.[89] Similarly, in *Admonition No. 23-12*, post-surgical complications, including fatigue and memory loss, were found to contribute to professional lapses.[90] In *Matter of Holton a/k/a Mather*, the decision cited the attorney's medical issues in mitigation due to their "negative impact on [the attorney's] law practice."[91]

Family-related stress has also been a frequent theme. In *Matter of Bettencourt*, the decision recognized the attorney's severe stress "due to a

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[85] *See* SUP. JUD. CT. STEERING COMM. ON LAW. WELL-BEING, *supra* note 83, at 5–9; *see also In re* Verner, MASS. BD. OF BAR OVERSEERS, SUPPLEMENTAL REPORT 1, 25 (2022) (noting that while public sector work may be stressful and subject to publicity, the Justices reiterated that even unusually intense publicity is not a mitigating factor for public officials).

[86] *See In re* Hilson, 863 N.E.2d 483, 496 (Mass. 2007)

[87] *See* MBD, *supra* note 7, at 395 ("At times, if causally connected, the fact that a lawyer or the lawyer's family is suffering from extraordinary stress or illness may serve as a special mitigating factor.").

[88] *Id.* at 396.

[89] *See* MASS. BD. OF BAR OVERSEERS, ADMONITION REP. 1, 4 (2020) [hereinafter 2020 ADMONITION REP.] (recognizing that the attorney's significant health problems and required surgery caused stress that interfered with his judgment and served as a mitigating factor).

[90] *See* MASS. BD. OF BAR OVERSEERS, ADMONITION REP. 1, 13 (2023) [hereinafter 2023 ADMONITION REP.] (noting that post-surgical complications, including "fatigue, confusion and memory problems," impaired the attorney's ability to keep track of deadlines and handle work-related obligations, and were considered in mitigation).

[91] *In re* Holton, 32 Mass. Att'y Disc. R. 246, 2 (2016).

terminal illness in his family and the resulting extreme demands on his time and energy" as a mitigating factor in his failures of diligence and communication.[92] Likewise, in *Matter of Caccavaro, Jr.*, the attorney discussed stress and anxiety caregiving responsibilities for a seriously ill spouse as mitigation for his misconduct.[93] Other cases have pointed to medical illness of family members or personal crises as mitigating factors—again, only when the attorney could establish a clear causal link to the professional violations.[94]

Work-related stress, especially when associated with changes in practice or excessive caseloads, has similarly been considered. In *Admonition No. 14-05*, the stress of transitioning from firm practice to solo work contributed to the attorney's lapses.[95] In *Matter of Brassard*, the decision discussed the attorney's overwhelming caseload resulting from her "inadequate law office management procedures."[96]

Finally, in a unique example, the attorney in *Matter of Parlow* said that the COVID-19 pandemic caused extraordinary stress.[97] The decision discussed the attorney's misconduct in light of the unprecedented demands of remote practice, health concerns, and widespread disruptions the pandemic caused.

B. Casually Related to Misconduct

Even when an attorney provides adequate documentation of a mental health condition, they must still establish a clear causal connection between that condition and the misconduct at issue.[98] A diagnosed mental health

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[92] *In re* Bettencourt, 35 Mass. Att'y Disc. R. 18, 1 (2019).

[93] *In re* Caccavaro, 36 Mass. Att'y Disc. R. 67, 1 (2020).

[94] *See, e.g.*, *In re* McKinley, 32 Mass. Att'y Disc. R. 399, 1 (2016) (discussing serious medical illness of family member); *In re* Sweeney, 32 Mass. Att'y Disc. R. 552, 5–6, 18 (2016) (discussing emotional and physical health of daughter, and the attorney withdrawing money from client trust account to pay daughter's college tuition); *see also* MASS. BD. OF BAR Overseers, ADMONITION REP. 1, 4 (2016) [hereinafter 2016 ADMONITION REP.] (discussing how attorney was "distracted" by family health issues).

[95] *See, e.g.*, 2014 ADMONITION REP., *supra* note 59, at 9 (noting that attorney experienced "stress related to the transition of his practice from a firm to a sole practitioner.").

[96] *In re* Brassard, 32 Mass. Att'y Disc. R. 45, 1–2 (2016) (identifying the attorney's "inexperience and being overwhelmed by her caseload due to inadequate law office management procedures" as mitigating factors).

[97] *In re* Parlow, 39 Mass. Att'y Disc. R. __, 16 (2023) (concluding that the attorney had "not proved that it was pandemic-related stress that caused his misconduct" and that such "absence of causation is fatal.").

[98] *In re* Judith C. Knight, 39 Mass. Att'y Disc. R. __, 38 (2023) ("medical condition or disability can be mitigating, but only if it caused the lawyer's misconduct."); *see also In re* Haese, 9 N.E.3d

condition, no matter how serious, will not mitigate sanctions unless it can be shown to have substantially contributed to the ethical violation.[99] This requires more than temporal proximity; the attorney must demonstrate that the condition meaningfully impaired their professional judgment or behavior in a way that directly caused—or significantly influenced—the misconduct.

As the BBO noted in *Matter of Knight*:

> "We received no evidence *connecting* the respondent's alleged depression with any of the charged misconduct. She did not prove, to our satisfaction, that her alleged depression *caused her* repeatedly to ignore client requests, prepare inadequate bills, or miss deadlines."[100]

The panel further observed that the respondent's misconduct in the relevant matter occurred both before and after the period during which she claimed to be suffering from depression, and that the professional lapses documented took place well after early 2020, the point at which she asserted her condition had been effectively treated.[101]

Courts have consistently refused to accept mental health mitigation claims where the misconduct appears unrelated to the asserted condition. In *Matter of Johnson*, for example, the respondent's financial mismanagement was attributed to a long-standing gambling problem rather than to any psychological diagnosis.[102] The court not only rejected mitigation but also raised concerns about the respondent's "less than candid" disclosures to her therapist, which further undermined the reliability of the claim.[103]

This insistence on causation is codified in disciplinary procedures. Under BBO Rule 3.28, the burden falls squarely on the attorney-respondent to provide substantial, credible evidence linking the condition to the

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326, 333 (Mass. 2014) (finding medical condition did not cause intentional misconduct); *In re* Schoepfer, 687 N.E.2d 391, 394 (Mass. 1997) (citing *In re* Discipline of an Att'y, 468 N.E.2d 256, 262 (Mass. 1984)) (noting that the burden is on the attorney-respondent to prove causation); *see also* RULES OF THE BD. OF BAR OVERSEERS § 3.28.

[99] *See* MBD, *supra* note 7, at 398.

[100] *In re Knight*, 39 Mass. Att'y Disc. R. at 39 (emphasis added).

[101] *Id.*

[102] *See In re* Johnson, 893 N.E.2d 783, 784–85 (Mass. 2008).

> Primarily at issue on appeal is whether the factors alleged by the respondent in mitigation require a departure from the presumptive sanction of indefinite suspension or disbarment for misappropriation of client funds . . . . While there may be circumstances where medical, psychological, or other mitigating factors will warrant a reduction from the presumptive sanction, this is not such a case.

Id.

[103] *Id.* at 785.

misconduct.[104] As articulated in *Matter of Corbett*, it is not enough to establish the existence of a mental health condition; the attorney must demonstrate, through competent evidence, that the condition was a "substantial contributing cause" of the ethical violation.[105]

The ABA Standards similarly stress that mitigation is appropriate only when a mental health condition is directly related to the offense.[106] The degree of weight given in mitigation depends on the nature of the relationship: if the condition is deemed the principal cause of the misconduct, it should be given great weight; if it merely contributed, less weight is appropriate; and if the relationship is attenuated or speculative, little or no mitigation should be granted. In practice, meeting this standard can be difficult. For example, in *Matter of Hughes*, the respondent's mitigation claim failed in part because his psychiatrist had not been informed of the full scope of the misconduct, casting doubt on the adequacy and accuracy of the medical evaluation.[107]

C. Mitigation vs. Incapacity

Importantly, while mental health conditions may serve as mitigating factors in attorney discipline, they are not equivalent to incapacity. Mitigation addresses the context or causes of misconduct and may reduce the severity of sanctions; incapacity, by contrast, concerns whether a lawyer is fundamentally unable to fulfill their professional duties due to a mental or physical condition. The distinction is critical, as it determines whether an attorney's conduct is subject to discipline or is instead diverted to a separate incapacity proceeding.

The ABA Standards for Imposing Lawyer Sanctions and Rule 23 of the Model Rules for Lawyer Disciplinary Enforcement both emphasize this

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[104] *See* RULES OF THE BD. OF BAR OVERSEERS § 3.28.

[105] *See In re* Corbett, 84 N.E.3d 837, 840–41 (Mass. 2017). "The hearing committee . . . declined to credit evidence supporting the requisite causal nexus between respondent's intentional misconduct and any psychological condition," finding that the evidence offered by the attorney failed "to establish that his psychological condition was a 'substantial contributing cause' of the misconduct." *Id.* (citing *In re* Balliro, 899 N.E.2d 794, 804 (Mass. 2009)).

[106] *See* Kristy N. Bernard & Matthew L. Gibson, *Professional Misconduct by Mentally Impaired Attorneys: Is There a Better Way to Treat an Old Problem*, 17 GEO. J. LEGAL ETHICS 619, 620 (2004).

[107] *See In re* Hughes, 39 Mass. Att'y Disc. R. __, 6–7 (2023) (noting that the respondent's mitigation claim failed in part because his psychiatrist had not been informed of the full extent of the misconduct, and the court declined to weigh any of the proposed mitigating factors, including poor mental health, cancer diagnosis, and stress from alleged extortion).

distinction.[108] Incapacity is not inherently misconduct. If a lawyer's mental or physical condition impairs their ability to practice law but does not result in ethical violations, the appropriate response is not discipline, but assessment, monitoring, or temporary removal from practice. As Rule 23 makes clear, incapacity should not be conflated with misconduct; rather, it addresses whether the lawyer is presently able to carry out their professional responsibilities.[109]

Even when incapacity contributes to misconduct, disciplinary bodies must distinguish between unintentional violations rooted in incapacity and willful professional breaches. If an attorney's misconduct is alleged to result from a mental condition, it is not enough to merely assert incapacity—the respondent must demonstrate that the condition substantially caused the misconduct, and that the misconduct was not intentional. The BBO rules reinforce this separation, stating that incapacity proceedings are designed to assess a lawyer's fitness to practice, rather than to punish violations of the rules of professional conduct.[110]

The American Bar Association's commentary to Rule 23 further underscores this point: a finding of incapacity triggers a different procedural response than a disciplinary sanction. Attorneys found to be incapacitated due to mental health concerns may be placed under probationary conditions, referred to treatment programs, or suspended from practice pending recovery. In this framework, the goal is not retribution but rehabilitation and protection of the public.[111]

In Massachusetts, a declaration of incapacity requires clear and convincing evidence that an attorney is no longer able to practice law competently due to their condition. Incapacity cases are handled separately from standard disciplinary matters, and incapacity alone is not a defense to misconduct.[112] As the Supreme Judicial Court has reiterated, a lawyer's inability to practice effectively does not excuse ethical violations absent proof that the misconduct itself was the result of that incapacity.[113]

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[108] MODEL RULES FOR LAW. DISCIPLINARY ENF'T r. 23 (AM. BAR ASS'N 2020) (distinguishing incapacity, which relates to an attorney's ability to practice law, from misconduct, which concerns violations of ethical rules); *see* STANDARDS FOR IMPOSING LAWYER SANCTIONS 1, 9–10 (AM. BAR ASS'N 1986) (amended 1992) (highlighting that mental health impairments may mitigate sanctions when causally related to misconduct).

[109] *See* MODEL RULES FOR LAW. DISCIPLINARY ENF'T r. 23 (AM. BAR ASS'N 2020).

[110] *See* RULES OF THE BD. OF BAR OVERSEERS § 3.28.

[111] *See* MODEL RULES FOR LAW. DISCIPLINARY ENF'T r. 23 (AM. BAR ASS'N 2020).

[112] MASS. SUP. JUD. C. r. 4:01 sec. 13(2) (2024); *see also* Ellen M. Meagher, *When a Colleague Becomes Impaired: Obligations of Lawyers and Law Firms as to Incapacitated Partners or Associates*, MASS. BD. OF BAR OVERSEERS OFF. OF BAR COUNS. (February 2005).

[113] *See In re* Zankowski, 164 N.E.3d 898, 908–09 (Mass. 2021).

Ultimately, the distinction between mitigation and incapacity is not just procedural but conceptual. Mitigating factors, such as mental illness, may influence disciplinary outcomes in cases of misconduct. Incapacity, however, is a threshold issue about whether the attorney can lawfully and ethically continue to practice at all. Understanding this distinction ensures that disciplinary responses remain tailored to the lawyer's conduct and capacity, rather than conflating moral blame with functional impairment.

But what does this distinction look like in practice? The next section explores common disciplinary themes in Massachusetts cases where mental health was raised in mitigation, illustrating how theory meets lived experience.

IV. BREAKDOWNS IN PRACTICE: COMMON DISCIPLINARY THEMES

Mental health struggles, particularly depression and anxiety, may impair attorneys' ability to meet core professional responsibilities. In disciplinary decisions across Massachusetts, certain patterns of misconduct repeatedly emerge when mental health is raised in mitigation. These include failures in communication, mismanagement of client funds, neglect of competence and diligence obligations, and failures to properly withdraw from representation. The cases that follow illustrate how mental health conditions can disrupt everyday law practice, shedding light on the specific vulnerabilities that lead to disciplinary action—and offering insight into how disciplinary bodies evaluate these complex scenarios.

A. Communication Failures

Massachusetts disciplinary bodies have consistently acknowledged the causal relationship between mental health conditions—particularly depression—and breakdowns in attorney-client communication. Because communication lies at the heart of the attorney-client relationship, lapses in responsiveness, candor, or clarity can trigger serious ethical violations under the Massachusetts Rules of Professional Conduct ("Mass. R. Prof. C."). Most notably, Rule 1.4 requires that attorneys keep clients reasonably informed about the status of their matters and provide sufficient information to permit informed decision-making.[114]

1. Failure to Open Mail and Respond to Inquiries

A common manifestation of communication breakdowns linked to depression is the attorney's inability to manage routine correspondence—including opening mail and responding to client inquiries. In *Admonition No.*

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[114] MASS. R. PROF. C. r. 1.4 (MASS. SUP. JUD. CT. 2015).

14-07, the attorney's severe depression contributed to her failure to open essential mail, which led to her lapse in attorney registration with the Board of Bar Overseers and resulted in the unauthorized practice of law.[115] The court acknowledged that, throughout the relevant period, the attorney was suffering from chronic and severe depression and considered her condition a mitigating factor in the disciplinary decision.

Similarly, in *Admonition No. 14-04*, an attorney's failure to respond promptly to a client's inquiries was also attributed to severe depression.[116] The disciplinary board recognized the causal connection between the attorney's mental health condition and her professional lapses, treating the depression as a mitigating factor. Notably, both cases involved not only communication failures under Mass. R. Prof. C. Rule 1.4 but also lapses in diligence and timeliness under Rule 1.3, illustrating how untreated mental health conditions can trigger cascading violations across multiple dimensions of legal practice.[117]

2. Failure to Respond to Requests for Information

Another frequent communication breakdown involves attorneys failing to respond to client inquiries or to keep clients reasonably informed—core obligations under Mass. R. Prof. C. 1.4. In many cases, these failures are rooted in or exacerbated by underlying mental health conditions, particularly depression. In *Matter of Brennan, Jr.*, the attorney's untreated depression contributed to his neglect of a client matter, resulting in violations of Rules 1.2(a) and 1.3, which govern the scope of representation and diligence, respectively.[118] Brennan repeatedly failed to respond to his client's reasonable requests for information, in violation of Rule 1.4(a). The Supreme Judicial Court acknowledged that while his mental health condition did not excuse the misconduct, it served as a mitigating factor in determining the appropriate sanction.

A more complex scenario arose in *Matter of Meehan*, where the attorney's depression, combined with significant family-related stress, impaired his ability to represent his client effectively.[119] Although Meehan informed the client of his medical condition, he did not take appropriate steps to withdraw

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[115] *See* 2014 ADMONITION REP., *supra* note 59, at 12–13 (noting that the attorney's "chronic and severe depression" contributed to her failure to open mail and resulted in administrative suspension and unauthorized practice of law).

[116] *See id.* at 7–8 (noting that the attorney's severe depression led to extended communication and diligence failures, which were considered in mitigation).

[117] MASS. R. PROF. C. r. 1.3, 1.4 (MASS. SUP. JUD. CT. 2015).

[118] *See In re* Brennan, 32 Mass. Att'y Disc. R. 54, 1–2 (2016) (noting that the attorney's untreated depression contributed to his multi-year neglect of a client matter and violations of Rules 1.2(a) and 1.3).

[119] *See In re* Meehan, 33 Mass. Att'y Disc. R. 313, 2 (2017) (noting that the attorney's depression and family-related stress affected his representation and were considered in mitigation).

or secure alternative counsel.[120] This omission, coupled with his failure to provide case updates or explain litigation developments, resulted in violations of multiple ethical rules: Rule 1.1 (competence), Rule 1.2(a) (scope of representation), Rule 1.3 (diligence), and Rule 1.4(a)–(b) (communication and client decision-making).[121] The court considered Meehan's mental health challenges in mitigation but concluded that his failure to adequately communicate with and protect his client still warranted discipline.[122]

Together, these cases highlight the disciplinary system's careful balancing of compassion and accountability: mental health conditions that interfere with communication obligations may mitigate, but do not erase, the professional duties owed to clients. They also underscore how communication failures often intersect with broader lapses in diligence, competence, and withdrawal—especially when attorneys fail to take proactive steps to protect their clients once their own capacity is impaired.

3. Misrepresentations and Communication Failures

Attorneys experiencing mental health crises may struggle not only with timely communication but also with maintaining accuracy and honesty in their interactions with clients and disciplinary authorities. Mental health conditions such as depression and anxiety can impair judgment, leading to misrepresentations that compound communication failures and erode trust. For example, in *Matter of Gallagher*, the attorney's "multiple psychological conditions" were found to be related to her misconduct, including a pattern of misleading statements to both her client and bar counsel.[123] Although Gallagher's mental health condition was considered a mitigating factor, the seriousness of her misrepresentations warranted formal discipline under Mass. R. Prof. C. 1.4 (communication) and 8.4(c), (d), and (h) (misrepresentation).[124]

A similar pattern arose in *Matter of Brennan, Jr.*, where the attorney's depression–stemming from personal loss–contributed to his misrepresentation of the status of a dismissed case and his subsequent avoidance of the client's inquiries.[125] While the court acknowledged his mental health struggles as a mitigating factor, the dishonesty of his

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[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] *See In re* Gallagher, 35 Mass. Att'y Disc. R. 196, 2 (2019).

[124] *See id.*

[125] *See In re* Brennan, Jr., 32 Mass. Att'y Disc. R. 54, 1–2 (2016).

communication nevertheless resulted in a violation of Rule 1.4 and corresponding discipline.[126]

More severe consequences followed in *Matter of Molloy*, where the attorney, who had a documented history of depression and anxiety, made misrepresentations about the status of a case and the involvement of an expert witness. [127] Although the court found that her mental health impairments contributed to her misconduct, the seriousness of her ethical violations and her prior disciplinary history warranted a year-and-a-day suspension. The court acknowledged that her "depression and anxiety disorder impaired her judgment and contributed to her violations," but ultimately concluded that these factors did not outweigh the need for significant discipline.[128]

These cases illustrate how depression and related mental health conditions can significantly impair an attorney's ability to communicate honestly and effectively. Failures to respond, inaccurate reporting, and misleading representations often emerge together, resulting in violations not only of Rule 1.4 but also of the broader ethical duties outlined in Rule 8.4. Taken together, these cases underscore the disciplinary system's commitment to both accountability and compassion. Mental health struggles do not excuse dishonesty or inattention, but when such conditions are substantiated and causally linked to the misconduct, they may properly be considered in mitigation.

B. Mismanagement of Funds and Property

Mismanagement of client funds—including improper fee withdrawals, failure to provide timely accountings, or outright misuse—frequently appears in disciplinary cases involving attorneys with mental health challenges. Often these violations occur alongside broader failures in communication, competence, and office management, reflecting how depression and related conditions can—at their most severe—erode an attorney's capacity to fulfill core fiduciary obligations.

In *Matter of Sheehan*, the attorney, who was suffering from severe depression, "misused at least $33,028 of the client's funds for his own personal use."[129] The court acknowledged his mental health condition as a mitigating factor, though not a defense, in assessing the appropriate sanction.[130] Similarly, in *Admonition No. 14-04*, the attorney failed to comply with the requirements of Mass. R. Prof. C. 1.15(d)(2) by neglecting to provide

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[126] *Id.*

[127] *In re* Molloy, 34 Mass. Att'y Disc. R. 356, 2–3 (2018).

[128] *Id.* at 3, 9–10.

[129] *See In re* Sheehan, 35 Mass. Att'y Disc. R. 551, 1 (2019).

[130] *Id.* at 2.

the client—at or before the time of each fee withdrawal—with an itemized bill, notice of the amount and date of the withdrawal, and a statement of the balance remaining in the trust account.[131] Depression was again cited as a mitigating factor, reflecting the disciplinary board's recognition that mental illness can impair an attorney's ability to manage financial responsibilities.[132]

Courts have consistently acknowledged a causal link between depression and fund mismanagement, especially when the condition interferes with an attorney's ability to remain organized or focused. In *Matter of Kachajian, Jr.*, for example, the attorney's depression left him only minimally aware of his IOLTA account balance at times, which contributed to his mishandling of client funds.[133] While the court considered his mental health struggles in mitigation, it nonetheless held him accountable for the resulting ethical violations.[134]

A similar dynamic was evident in the case of *Howard*, where the attorney borrowed client funds without prior authorization and committed multiple billing-related errors. [135] Although Howard's depression had not been diagnosed at the time of the misconduct, the court later accepted it as a mitigating factor once treatment began.[136] Notably, the record contained little discussion of whether her mental health condition was causally related to her financial violations, possibly due to the stipulation between the parties.[137] This case illustrates how mitigation based on mental illness is sometimes acknowledged implicitly, even without a detailed causation analysis on the record.

The connection between mental health and financial mismanagement was also a key issue in *Molloy*.[138] The court found that Molloy, who had a documented history of depression and anxiety, overcharged a client by $1,000, failed to remit funds owed to an expert witness who had secured a small

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[131] *See* 2014 ADMONITION REP., *supra* note 59, at 7–8.

[132] *See id.* (noting that the attorney's severe depression, resulting from serious personal and family problems, contributed to their failure to comply with trust account rules and was considered in mitigation).

[133] *In re* Kachajian, Jr., 33 Mass. Att'y Disc. R. 238, 1 (2017).

[134] *Id.*

[135] *In re* Howard, 31 Mass. Att'y Disc. R. 299, 2–3 (2015).

[136] *Id.* at 3.

[137] *Id.*

[138] *See generally In re* Molloy, 31 Mass. Att'y Disc. R. 463 (2015) (describing respondent's misrepresentation of an expert's service to client and mishandling of invoices).

claims judgment, and later misled the client about the expert's availability.[139] She also misused client funds in a separate matter and failed to provide an adequate accounting of her time.[140] Although the court accepted that Molloy's mental health struggles impaired her judgment and contributed to the misconduct, it ultimately imposed a year-and-a-day suspension, reflecting the seriousness of the ethical breaches and her prior disciplinary record.[141]

Together, these cases show how mental health conditions can meaningfully affect an attorney's financial management practices and decision-making. Depression and anxiety may compromise attentiveness, organization, and judgment—factors essential to the ethical handling of client property. While such conditions may mitigate the severity of sanctions when properly documented and causally linked, they do not absolve attorneys of their fiduciary responsibilities. As the courts have made clear, the duty to safeguard client funds is paramount, and any failure to do so—regardless of underlying mental health conditions—remains subject to disciplinary oversight.

C. Competence, Diligence, and Neglect

Misconduct related to competence and diligence frequently arises in tandem with other professional violations and is often significantly impacted by mental health conditions—particularly depression. Under Mass. R. Prof. C. 1.1, competence requires that attorneys perform legal services with the knowledge, skill, and thoroughness reasonably necessary for representation.[142] Rule 1.3 similarly obliges attorneys to act with reasonable promptness and zeal.[143] While the Rules do not explicitly define "neglect," the term typically refers to an attorney's failure to take required action in a timely manner, such as missing deadlines or failing to pursue a client's case.[144]

Mental health conditions such as depression and anxiety can substantially impair an attorney's ability to meet these obligations. When attorneys struggle with organization, concentration, or motivation due to mental illness, critical tasks may be neglected. Disciplinary authorities in Massachusetts have recognized these impairments and, in some cases, have considered them mitigating factors in sanction evaluations.

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[139] *Id.* at 3–4.

[140] *Id.* at 2.

[141] *Id.* at 4.

[142] MASS. R. PROF. C. r. 1.1 (MASS. SUP. JUD. CT. 2015).

[143] MASS. R. PROF. C. r. 1.3 (MASS. SUP. JUD. CT. 2015).

[144] *See In re* Lapointe, 39 Mass. Att'y Disc. R. __, 1 (2023) (describing as neglect counsel's failure to take significant action on a case, provide documents to relevant parties, and file a case within a statute of limitations).

1. Failure to Handle Matters with Competence and Diligence

In *Matter of Gallagher*, the attorney failed to competently handle a post-conviction matter, leading to violations of Mass. R. Prof. C. 1.1 (competence), 1.2(a) (scope of representation), and 1.3 (diligence).[145] The court noted in mitigation that the attorney "suffered from multiple psychological conditions that were related to her misconduct for which she has now sought treatment."[146] Similarly, in *Admonition No. 14-04*, the attorney's severe depression "resulting from serious personal and family problems" was acknowledged as a mitigating factor where the attorney was found responsible for violating Rule 1.3 by failing to timely pursue the divorce requested by their client.[147]

2. Neglect and Mental Health Struggles

Neglect often emerges when attorneys suffering from mental illness fail to meet deadlines, maintain communication with clients, or manage their caseloads effectively. In *Matter of Lapointe*, the attorney missed deadlines, failed to provide documentation, and ultimately let a claim lapse due to the statute of limitations.[148] The court found that Lapointe's depression and concurrent medical issues played a significant role in the neglect, and—as such—treated those conditions as mitigating.[149] Similarly, in *Admonition No. 22-02*, the attorney's untreated depression and alcoholism led to the neglect of two matters, including the failure to appropriately mail essential applications.[150]While the court acknowledged these conditions in mitigation, it nonetheless imposed discipline due to the gravity of the neglect.[151]

Finally, in *Matter of Roper*, the attorney failed to maintain malpractice insurance and neglected to meet core professional obligations.[152] The court credited the attorney's depression and anxiety as contributing factors, noting that her commitment to treatment and improvement of symptoms helped

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[145] *In re* Gallagher, 35 Mass. Att'y Disc. R. 196, 1–2 (2019).

[146] *Id.* at 2.

[147] 2014 ADMONITION REP., *supra* note 59, at 8.

[148] *In re* Lapointe, 39 Mass. Att'y Disc. R. at 1.

[149] *Id.*

[150] MASS. BD. OF BAR OVERSEERS, ADMONITION REP. 1, 2 (2022) [hereinafter 2022 ADMONITION REP.].

[151] *See id.*

[152] *In re* Roper, 32 Mass. Att'y Disc. R. 482, 1–2 (2016).

reduce the severity of the sanction.[153] This case demonstrates how timely treatment can mitigate disciplinary consequences.[154]

3. The Interaction Between Neglect, Competence, and Diligence

Some cases reveal how neglect is deeply intertwined with failures in competence and diligence. In *Matter of Hess*, the attorney repeatedly failed to file motions, attend hearings, or complete necessary work.[155] The court attributed this conduct to untreated depression and anxiety, which also contributed to communication breakdowns under Rule 1.4.[156] This overlap between neglect, competence, and communication failures is common when attorneys face untreated mental health challenges.

A similar pattern arose in *Matter of Barrat*, where depression was cited as a mitigating factor in the attorney's failure to manage multiple cases and subsequent misrepresentations to clients.[157] Although intentional misrepresentation and deception generally aggravate misconduct, the court recognized the role of the attorney's depression and reduced the sanction accordingly.[158] Likewise, in *Matter of MacDonald*, the attorney's depression was found to be a substantial contributing cause of neglect across multiple matters, and the court imposed a six-month suspension rather than a harsher penalty.[159]

These cases illustrate how depression and anxiety can undermine the sustained effort, organization, and client engagement required by professional standards. While such impairments may give rise to multiple rule violations—including under Rules 1.1, 1.3, and 1.4—they may also mitigate the resulting discipline when causally linked to the misconduct. Courts in Massachusetts have consistently required a documented connection between the attorney's mental health condition and their professional lapses. When that connection is established, and especially when the attorney is actively engaged in treatment, disciplinary authorities have shown some willingness to reduce the severity of sanctions. This approach reflects an ongoing effort to balance accountability with an informed understanding of mental illness and its effects on legal practice.

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153 *Id.* at 2.

154 *Id.* at 1–2.

155 *In re* Hess, 39 Mass. Att'y Disc. R. __, 1–2 (2023).

156 *Id.* at 2; *see* MASS. RULES OF PRO. CONDUCT r. 1.1, 1.3, 1.4 (MASS. SUP. JUD. CT. 2015).

157 *See In re* Barrat, 20 Mass. Att'y Disc. R. 27, 1–2 (2004).

158 *Id.* at 2.

159 *See In re* MacDonald, 23 Mass. Att'y Disc. R. 411, 3 (2007).

D. Withdrawal: Tension Between Client Duty and Lawyer Well-Being

A tension may exist between an attorney's professional obligation to competently advocate for clients and their personal need to attend to mental health and well-being. This conflict becomes especially acute when a lawyer's psychological condition begins to impair their ability to meet ethical obligations. ABA Model Rule 1.16(a)(2), and its Massachusetts analogue, require an attorney to withdraw from representation when a mental or physical condition "materially impairs" their capacity to provide competent and diligent representation.[160] On its face, the rule provides a clear directive. In practice, however, it presents a difficult challenge—particularly for attorneys experiencing mental health struggles who may lack the clarity, support, or insight necessary to assess their own fitness to practice.

Mandatory withdrawal is typically triggered only when a lawyer's impairment becomes severe or unmanageable. The problem is compounded by the vagueness of the standard: Rule 1.16(a)(2) does not define what constitutes a qualifying condition, nor does it offer guidance on the severity, duration, or functional impact necessary to mandate withdrawal.[161] As a result, lawyers experiencing psychological distress—especially in the form of depression, anxiety, or burnout—may struggle to recognize when continued representation poses a risk to clients, or may hesitate to withdraw due to stigma, financial pressure, or professional isolation. Specifically, there is no comprehensive list of mental conditions that trigger mandatory withdrawal, nor is there guidance on the duration of the impairment required to necessitate it.[162] This uncertainty complicates the ability of attorneys facing mental health challenges to determine when they must withdraw from cases.

In Massachusetts disciplinary cases, failure to withdraw or to execute withdrawal properly has surfaced relatively frequently in matters involving mental health. These cases reflect the real-world difficulty attorneys face in navigating the intersection of personal impairment and professional responsibility. As stress, depression, and burnout continue to affect members of the profession, mental health conditions often contribute not only to

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[160] MODEL RULES OF PRO. CONDUCT r. 1.16 (AM. BAR ASS'N 2023); *see also* Mark J. Fucile, *Model Rule 1.16(a)(2): Where Wellness Meets Withdrawal*, AM. BAR ASS'N (Oct. 2, 2020), https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/model-rule-116a2-where-wellness-meets-withdrawal/ [https://perma.cc/5FKW-E9WG] (discussing withdrawal and the nuanced application of Rule 1.16(a)(2)).

[161] *Id.*

[162] Daniel G. Esquivel, *Punishing the Victim: Model Rule 1.16(a)(2) and Its Relation to Lawyers with Anxiety, Depression, and Bipolar Disorder*, 11 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 108, 122–23 (2021).

violations of Rule 1.16(a)(2) but also to broader failures of competence, diligence, and communication. Determining when withdrawal is ethically required demands a complex combination of legal judgment, professional self-awareness, and personal insight—capacities that may be precisely what the attorney lacks in moments of psychological distress.

1. Failure to Withdraw: Misconduct Due to Mental Health Struggles

Failure to withdraw when impaired is one of the most serious ways mental health challenges can jeopardize client protection and an attorney's career. In *Matter of Meehan*, an attorney suffering from severe depression and family-related stress failed to withdraw from a client matter despite clear indications that his health was compromising his ability to provide competent representation.[163] Although Meehan disclosed certain medical issues to the client—though it is unclear whether this included his depression—he did not take further steps to protect the client's interests, such as securing substitute counsel or advising the client to seek alternative representation.[164] His impaired judgment became more apparent when he filed a lawsuit in a court lacking personal jurisdiction, compounding the consequences.[165] The court found that Meehan had violated several provisions of the Massachusetts Rules of Professional Conduct, including Rules 1.1 (competence), 1.2(a) (scope of representation), and 1.3 (diligence).[166] While his mental health condition was accepted in mitigation, the court ultimately concluded that his failure to withdraw or arrange for alternative representation constituted a serious breach of professional responsibility.[167]

A similar issue arose in *Szostkiewicz*, where the attorney failed to withdraw from a case despite suffering "for many years and at all times relevant to these proceedings . . . from medical and emotional problems that impaired his judgment."[168] He not only neglected to file a motion to withdraw—which is required under Mass. R. Prof. C. 1.16(c) when withdrawing from a pending court matter—but also failed to appear in court.[169] These failures violated Rule 1.16(c), which requires attorneys to seek court approval before withdrawing from a matter in litigation.[170] The court acknowledged his emotional struggles as a mitigating factor but nevertheless found that his lack

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[163] *See In re* Meehan, 33 Mass. Att'y Disc. R. 313, 1–2 (2017).

[164] *Id.* at 2.

[165] *Id.* at 1.

[166] *Id.* at 2.

[167] *Id.*

[168] *In re* Szostkiewicz, 31 Mass. Att'y Disc. R. 609, 2 (2015).

[169] *Id.* at 2.

[170] MASS. RULES OF PRO. CONDUCT r. 1.16(c) (MASS. SUP. JUD. CT. 2025).

of diligence and failure to withdraw appropriately constituted misconduct warranting discipline.[171]

These cases underscore the ethical risks attorneys face when they fail to recognize or address the need to withdraw from representation due to mental impairment. The duty to withdraw under Rule 1.16(a)(2) is not discretionary; it exists to protect clients from the ongoing consequences of compromised legal advocacy. While mental health struggles may mitigate the severity of sanctions, they do not absolve lawyers of their obligation to step back from representation when their condition materially impairs their ability to serve their clients effectively.

A related challenge appeared in *Matter of Roper*, where the attorney failed to appreciate how her depression and anxiety impaired her ability to maintain malpractice insurance and fulfill other professional obligations.[172] Although not a direct violation of the withdrawal rules, the court noted that her inability to recognize the extent of her impairment contributed to the misconduct. This case highlights a recurring theme: when attorneys lack insight into the impact of their mental health on their practice, even well-intentioned efforts to continue working can result in significant ethical breaches.

2. Improperly Executed Withdrawal: Mismanagement and Failure to Protect Clients

Even when attorneys recognize that withdrawal is necessary, a failure to execute the withdrawal properly can be as harmful as failing to withdraw at all. For attorneys experiencing mental health challenges, the logistical and ethical steps required for an orderly withdrawal—such as communicating with clients, returning property, and refunding unearned fees—may become overwhelming. Yet these are not optional tasks. Each is a critical component of the attorney's continuing duty to protect the client's interests, as codified in Mass. R. Prof. C. 1.16(d).

In *Matter of Hess*, the attorney, suffering from untreated depression and anxiety, failed to refund an unearned retainer and neglected to properly communicate with the client during the withdrawal process.[173] This violated Rule 1.16(d), which mandates both timely refunds and adequate

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[171] *See In re* Meehan, 33 Mass. Att'y Disc. R. 313, 1–2 (2017).

[172] *In re* Roper, 32 Mass. Att'y Disc. R. 482, 1–2 (2016).

[173] *See In re* Hess, 39 Mass. Att'y Disc. R. __, 1–2 (2023) (suspending the attorney for eighteen months for, among other violations, failing to refund an unearned retainer and failing to communicate during withdrawal; the attorney was suffering from untreated depression and anxiety, and later sought treatment through LCL and the Lawyers Depression Project).

communication upon withdrawal.[174] While the court recognized that Hess's mental health struggles served as a mitigating factor, it did not excuse the attorney's failure to protect the client's interests during disengagement.[175]

Likewise, in *Matter of Knight*, the attorney who had been diagnosed with major depressive disorder mismanaged client funds and failed to return unearned fees after withdrawing from the matter—again violating Rule 1.16(d).[176] The court rejected her mental health condition as a mitigating factor, citing the absence of evidence establishing a causal link between the depression and the misconduct.[177] Regarding both her neglect and her intentional conduct, the court wrote: "She did not prove, to our satisfaction, that her alleged depression caused her repeatedly to ignore client requests, prepare inadequate bills, or miss deadlines," and "[i]t is certainly not obvious or intuitive that her alleged depression caused her to intentionally misuse funds."[178]

A similar pattern emerged in *Matter of Molloy*, where the attorney's depression and anxiety contributed to a range of professional failures, including financial mismanagement, miscommunication, and improper withdrawal.[179] Molloy failed to provide a full written accounting of the work performed—another violation of Rule 1.16(d)—and misused client funds while failing to meet basic communication obligations.[180] While the court acknowledged her mental health challenges as mitigating, it imposed a year-and-a-day suspension in light of the seriousness of her misconduct and prior disciplinary history.[181]

Matter of Roper further illustrates how mental health challenges can interfere with both financial and procedural responsibilities during withdrawal.[182] The attorney's anxiety and depression contributed to her failure to maintain malpractice insurance and to provide timely and accurate client information upon disengagement.[183] Although the court considered

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[174] MODEL RULES OF PRO. CONDUCT r. 1.16(d) (AM. BAR ASS'N 2023).

[175] *In re Hess*, 39 Mass. Att'y Disc. R. at 2–3.

[176] *See In re* Judith C. Knight, 39 Mass. Att'y Disc. R. __, 1, 39–40 (2023) (suspending the attorney for two years for, among other misconduct, mismanaging client funds and failing to return unearned fees; although the attorney asserted a diagnosis of major depressive disorder, the court found no proven causal connection and declined to treat it as mitigating).

[177] *Id.*

[178] *Id.* at 39 (rejecting the attorney's claimed mitigation based on depression).

[179] *In re* Molloy, 34 Mass. Att'y Disc. R. 356, 2–3 (2018).

[180] *Id.*

[181] *Id.* at 2.

[182] *See generally In re* Roper, 32 Mass. Att'y Disc. R. 482 (2016) (discussing the attorney's failure to maintain malpractice insurance).

[183] *Id.* at 2.

her condition in mitigation, it imposed a six-month suspension, with three months stayed contingent on her continued treatment and participation in services through Lawyers Concerned for Lawyers (LCL).[184]

These cases collectively highlight that, even when withdrawal is prompted by legitimate health concerns, attorneys are still obligated to carry it out in a manner that safeguards the client's interests. Improperly executed withdrawal—particularly when it involves miscommunication or mishandling of client funds—can compound the harm. While mental health conditions may warrant mitigation, they do not excuse attorneys from their core ethical duties. While this may understandably be a daunting task for an attorney facing a personal crisis or tumult, courts have consistently emphasized that attorneys must take proactive, supported steps to ensure a responsible transition out of representation, especially when their own capacity is compromised.

3. The Intersection of Stress, Burnout, and Withdrawal

Stress and burnout are increasingly acknowledged as significant factors that can impair an attorney's ability to fulfill professional obligations, including the duty to withdraw from representation when continued service would compromise competence. However, Massachusetts courts have consistently distinguished between general stress and diagnosable mental health conditions in determining whether mitigation is warranted. While stress may help explain certain lapses in judgment or performance, it is rarely accepted as sufficient to excuse an attorney's failure to comply with the withdrawal requirements set forth in Rule 1.16.

In *Admonition 14-05*, for example, an attorney undergoing substantial stress during the transition from firm practice to solo practice experienced a breakdown in communication with a client after a heated disagreement.[185] Believing he could no longer represent the client effectively, the attorney nevertheless failed to take the necessary procedural steps to formally withdraw.[186] He neither notified the client of his intent to withdraw nor informed the court.[187] This omission violated Mass. R. Prof. C. 1.16(d), which governs the duties owed to clients upon termination of representation. While the court acknowledged the pressures the attorney faced, it made clear that

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[184] *Id.*

[185] *See* 2014 ADMONITION REP., *supra* note 59, at 9.

[186] *Id.*

[187] *Id.*

personal stress—even when significant—did not excuse his failure to follow mandatory withdrawal protocols.[188]

A similar issue was presented in *Matter of Holton*, where the attorney's "personal circumstances and medical issues" impaired her judgment and contributed to repeated professional failures, including neglecting client communication and missing critical court appearances.[189] The court acknowledged that Holton's stress was relevant context, but emphasized that it did not absolve her of the duty to withdraw once she could no longer competently represent her client.[190] Her failure to do so led to disciplinary sanctions.[191] This case reinforces the principle that while stress and personal challenges may influence behavior, they do not negate an attorney's professional obligations.

Taken together, these cases affirm that attorneys experiencing stress or burnout remain bound by the ethical duty to protect their clients—particularly when their condition interferes with effective representation. Under Model Rule 1.16(a)(2) and Mass. R. Prof. C. 1.16, withdrawal is required when a lawyer's mental or physical condition materially impairs their capacity to provide competent legal services.[192] Massachusetts courts have repeatedly held that stress, absent a formally diagnosed mental health condition, is not by itself a sufficient basis for excusing a failure to withdraw. While it may warrant some mitigation, it does not eliminate the duty to take appropriate, protective action.

Ultimately, these decisions reflect a broader reality: recognizing when stress or burnout rises to the level of ethical impairment requires both sophisticated insight from attorneys and deliberate action.[193] Courts have

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[188] *Id.*

[189] *See In re* Holton, 32 Mass. Att'y Disc. R. 246, 1 (2016).

[190] *Id.*

[191] *Id.* at 2.

[192] MODEL RULES OF PRO. CONDUCT r. 1.16(a)(2) (AM. BAR ASS'N 2023); MASS. R. PROF. C. r. 1.16 (MASS. SUP. JUD. CT. 2025).

[193] Self-knowledge and self-awareness are widely recognized as difficult yet essential skills for professionals, particularly in high-stakes fields like law. Accurate self-assessment is critical for ethical decision-making, yet numerous studies reveal that individuals routinely overestimate their competence, fail to recognize impairment, or struggle to link introspection with action. *See* Sarah Schendel, *What You Don't Know (Can Hurt You): Using Exam Wrappers to Foster Self-Assessment Skills in Law Students*, 40 PACE L. REV. 154, 161–64 (2020); Justin Kruger & David Dunning, *Unskilled and Unaware of It: How Difficulties in Recognizing One's Own Incompetence Lead to Inflated Self-Assessments*, 77 J. PERSONALITY & SOC. PSYCH. 1121, 1121–23 (1999); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1340–44 (1997); Carrie Menkel-Meadow, *The Sense and Sensibilities of Lawyers: Lawyering in Literature, Narratives, Film and Television, and Ethical Choices Regarding Career and Craft*, 31 MCGEORGE L. REV. 1, 2–6 (1999) (emphasizing the importance of reflective capacity in legal practice); *see also* RANDALL KISER, SOFT SKILLS FOR THE EFFECTIVE LAWYER

shown some willingness to consider stress as a mitigating factor, but they have also drawn a firm line around client protection. Attorneys must proactively assess their capacity, implement safeguards, and take timely steps to withdraw when necessary. Absent these actions, even well-intentioned attorneys may face discipline—regardless of their subjective experience of emotional or professional strain.

V. FAILURE TO DEMONSTRATE CAUSATION

Establishing a causal link between an attorney's mental health condition and the misconduct at issue is often one of the most challenging aspects of bar disciplinary proceedings. The difficulty lies not only in demonstrating that a mental health condition existed, but in proving that it substantially contributed to the misconduct in question. Legal scholars have observed that evidentiary standards for this inquiry remain unsettled, with many jurisdictions—including Massachusetts—lacking clear guidance on how causation should be assessed.[194] One proposed standard is the "but for" test, which asks whether the misconduct would have occurred but for the attorney's mental health condition.[195] But even this formulation leaves unanswered questions about how attorneys should substantiate claims of impairment and what evidentiary burden they must meet.

Massachusetts disciplinary decisions reflect the doctrinal and evidentiary challenges inherent in proving causation. Courts require far more than a bare assertion of impairment; they expect comprehensive, corroborated evidence—such as contemporaneous medical records, expert testimony, and a clear timeline linking the mental health condition to the misconduct.[196] For example, in *Matter of Patch*, the Supreme Judicial Court rejected a claim for mitigation, finding that the respondent failed to provide any medical evidence of his depression or of his treatment.[197] Without such documentation, the Court concluded there was no basis to disturb the board's conclusion that

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25–29 (2017) (describing self-awareness as a foundational professional skill often missing from legal training).

[194] Rush, *supra* note 22, at 936–40; Leslie C. Levin, *The Emperor's Clothes and Other Tales about the Standards for Imposing Lawyer Discipline Sanctions*, 48 AM. U. L. REV. 1, 49–59 (1998); Stephen Gillers, *Lowering the Bar: How Lawyer Discipline in New York Fails to Protect the Public*, 17 N.Y.U. J. LEGIS. & PUB. POL'Y 485, 499–500 (2014).

[195] Esquivel, *supra* note 162, at 140–41.

[196] *See generally id.* (examining mental health disciplinary cases).

[197] *See In re* Patch, 997 N.E.2d 425, 426 (Mass. 2013). "The respondent's counsel argued, among other things, that the respondent had serious psychological issues. However, no evidence, expert or otherwise, was submitted at the hearing to support a claim that his misconduct was mitigated by these issues." *Id.*

the respondent's alleged psychological difficulties do not mitigate his misconduct.[198] Similarly, in *Matter of Knight*, the court declined to find mitigation where the attorney offered no evidence connecting her diagnosed depression to her mismanagement of client funds, and the misconduct occurred both before and after the period during which she claimed to be effectively treated.[199]

Even where records or evidence are provided, this alone is not sufficient to demonstrate causation. In *Matter of Hughes*, the attorney cited his mental health, stress stemming from alleged extortion, and a cancer diagnosis as mitigating factors.[200] However, the court rejected this assertion, based in part because his psychiatrist was unaware of the full extent of the misconduct, undercutting Hughes's claim that his mental health contributed to his violations.[201] The court drew comparisons to *Matter of Johnson*, in which an attorney's failure to disclose relevant facts to his therapist undermined his mitigation claim.[202] These cases underscore the importance of candor with both the court and treatment providers; vague, incomplete, or inconsistent evidence will not suffice.

A rejection of causal proof may also be based on a lack of temporal clarity in addition to a lack of clear behavioral causation. For example, in *Knight*, the Board noted that at least some of the misconduct in question "preceded and followed the period of depression she has identified," and that the attorney-respondent had not proven, "[t]o our satisfaction, that her alleged depression *caused* her repeatedly to ignore client requests, prepare inadequate bills, or miss deadlines."[203]

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[198] *See id.* at 427.

[199] *See In re* Judith C. Knight, 39 Mass. Att'y Disc. R. __, 39 (2023).

[200] *See In re* Hughes, 39 Mass. Att'y Disc. R. __, 6 (2023) (rejecting mental health, stress related to alleged extortion, and a cancer diagnosis as mitigating factors where the respondent failed to provide sufficient evidence linking those conditions to his misconduct).

[201] *See id.* at 7 (citing *In re* Johnson, 893 N.E.2d 783, 785 (Mass. 2008) (declining to consider mental health as mitigation where respondent was "'less than candid with her therapist concerning her serial and systematic misuse of clients' funds for personal uses'")).

[202] *See In re Johnson*, 893 N.E.2d at 785.

[203] *See In re Knight,* 39 Mass. Att'y Disc. R. at 39 (emphasis added). *See also In re* Johnson, 827 N.E.2d 206, 209 (Mass. 2005).

> The panel of the board that heard the respondent's evidence specifically concluded that he had not demonstrated a causal relationship between his circumstances and his misconduct. For example, while the tragic fatal injuries of a family member surely caused him anguish, his misappropriation of client funds commenced before he received word of that event. Moreover, the respondent's professional difficulties and financial reversals began years before the misconduct and, while they undoubtedly were stressful, cannot excuse or explain abdication of professional responsibilities.

Id.

An examination of causation will likely also consider whether the misconduct was intentional, because of the close relationship between mental health issues and the capacity to intentionally engage in misconduct. Continuing with *Knight*, the board further found that it was "[c]ertainly not obvious or intuitive that [the attorney's] alleged depression caused her to intentionally misuse funds."[204] This distinction—between negligent and intentional acts—is central to the treatment of causation in mental health-related mitigation, and courts are particularly skeptical of mitigation in cases involving intentional or fraudulent misconduct. While mental health struggles may contribute to lapses in judgment or failures in diligence, they are rarely accepted as mitigating when the misconduct involves deliberate deception or knowing violations.

This skepticism is reflected in a series of Massachusetts cases. In *Matter of Haese*, the court concluded that calculated dishonesty and fraudulent conduct could not be mitigated by generalized references to mental health struggles.[205] *Haese* highlights the potential for tension between an attorney providing a frank discussion of the circumstances surrounding misconduct and how that might be interpreted by the Board regarding their capacity to claim mental health as a mitigating factor:

> [A]t the hearing, the respondent did not testify that his actions with respect to . . . fees . . . , were the product of medical illness-induced mistake, or lack of cognitive capacity related to his medical conditions. Rather, *he testified specifically about the reasons why he consciously did what he did*. Given his testimony, once the hearing committee and derivatively the board disbelieved the respondent's proffered explanations and reasons for his conduct—as they were entitled to do—they were left with the fact that the respondent had acted consciously and intentionally in appropriating for his own purposes funds that belonged to others, and thereby converted those funds, and *were entitled to conclude that the necessary causal link between medical condition and misconduct did not exist*.[206]

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[204] *In re Knight*, 37 Mass. Att'y Disc. R. at 39.

[205] *See In re* Haese, 29 Mass. Att'y Disc. R. 297, 7, 13 (2013) (". . . as serious as the medical conditions were, they were not causally related to the intentional misconduct of the respondent that was the subject of counts 2 through 5."); *see also In re Johnson*, 893 N.E.2d at 785 (rejecting earlier claims of mitigation based on health conditions not linked to the misconduct).

[206] *In re Haese*, 29 Mass. Att'y Disc. R. at 10 n.4 (emphasis added).

Some attorney-respondents seem to acknowledge the impossibility of citing mental health as a mitigating factor where the misconduct was intentional. In *In re Rice, Jr.*, the attorney fabricated a letter to mislead authorities—an intentional act of misconduct.[207] While the respondent and the Board acknowledge that while "[d]uring the period of these events, the respondent was under severe stress resulting from serious family problems and suffered from depression for which he has received treatment," all parties "nonetheless stipulated that the respondent's intentional misconduct was not mitigated on that basis."[208]

A similar finding was made in *In re Corbett*, where the hearing committee declined to credit the respondent's psychological defense, concluding that the misconduct—intentional misrepresentations and calculated deceptions—was too deliberate to have been substantially caused by the respondent's psychological condition. [209] The attorney-respondent had presented in mitigation an expert psychiatric witness who "testified that at all relevant times, the respondent was suffering from a major depressive disorder and attention deficit hyperactivity disorder (ADHD), and that these disorders played a key causative role in the respondent's misconduct."[210] However, the committee declined to find a causal connection:

> [We] credit and find that the respondent's personal issues and the resulting depression, mental lethargy, and general inability to focus on detail played a substantial role in the course of his legal career . . . . [However,] various forms of the respondent's intentional misconduct—including his serial misuse of client funds, his misrepresentations to his clients, and his misrepresentations in response to bar counsel's inquiries—were too calculated and deliberate for the disabilities of depression and ADHD to have had a substantially contributing role. That misconduct instead demonstrates a relatively clear and calculating respondent,

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[207] *In re* Rice, Jr., 33 Mass. Att'y Disc. R. 409, 1 (2017) (noting that the respondent fabricated a letter purporting to be from an assistant clerk in an effort to mislead disciplinary authorities, and that although he suffered from depression and family stress at the time, "the parties nonetheless stipulated that the respondent's intentional misconduct was not mitigated on that basis.").

[208] *Id.* (noting that "[d]uring the period of these events, the respondent was under severe stress resulting from serious family problems and suffered from depression for which he has received treatment[,]" but that "[t]he parties nonetheless stipulated that the respondent's intentional misconduct was not mitigated on that basis.").

[209] *In re* Corbett, 84 N.E.3d 837, 840–41 (Mass. 2017).

[210] *See In re* Corbett, 33 Mass. Att'y Disc. R. 99, 8 (2017). While ADHD is generally classified as a neurodevelopmental disorder rather than a mental illness, its relevance to attorney discipline raises important and underexplored questions—particularly as diagnosis rates continue to rise.

> aware of his misdeeds, attempting to disguise his wrongdoing.[211]

The reviewing Justice from the SJC affirmed the Committee's findings, writing that she could not agree with the respondent-attorney because:

> . . . contrary to the hearing committee's finding, that the disabilities of a major depressive disorder and ADHD played a significantly causative role in all the respondent's misconduct, including his dissembling to his clients and to bar counsel and, . . . [his] refusal truly to accept responsibility for all the actions he took that were injurious to his clients as well as violative of our professional conduct rules.[212]

Interestingly, an earlier case from 2010, *Matter of Sharif*, examines not only the interaction between mental health and the intentionality of misconduct but also the intentionality of failing to accept responsibility for misconduct. In *Sharif*, the respondent-attorney not only misrepresented her work to clients, but also to Bar counsel—including creating a backdated letter.[213] The Justices agreed with Bar counsel that Sharif's depression did not have any "causal nexus to her deliberate and studied efforts to avoid responsibility for her misconduct."[214] While the Justices accepted "the committee's credibility determinations regarding the evidence offered in mitigation," they rejected "its ultimate finding and legal inference that her intentional misrepresentations (as distinct from other misconduct) are mitigated by her mental condition."[215] These cases collectively establish that the presence of a mental health condition, even if sufficiently documented, is insufficient to mitigate intentional misconduct.

Finally, courts are also attuned to the potential for attorneys to invoke mental health issues strategically, especially when raised only after disciplinary proceedings have commenced. In *Matter of Kydd*, the court concluded that the attorney "was keenly aware" of the potential usefulness of his mental health struggles as an excuse and rejected his attempt to delay accountability by

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[211] *Id.* at 9.

[212] *Id.* at 11.

[213] *In re* Sharif, 945 N.E.2d 922, 925 (Mass. 2011). "We agree with the board that her depression does not mitigate her intentional misrepresentations to bar counsel but was a mitigating factor in her conduct toward her clients, including her misuse of client funds." *Id.* at 932.

[214] *In re* Sharif, 26 Mass. Att'y Disc. R. 590, 5 (2010).

[215] *Id.*

retroactively citing a diagnosis.[216] This was largely based on the attorney's own "inculpatory statements" made to Bar counsel and to a therapist.[217]

In sum, proving causation between a mental health condition and attorney misconduct remains one of the most difficult hurdles for respondents in disciplinary proceedings. Massachusetts courts require a clear, documented link between the condition and the misconduct, demonstrated through medical records, treatment history, and expert analysis. While mental health struggles may mitigate sanctions for misconduct arising from neglect, delay, or organizational failure, they are far less likely to influence outcomes in cases involving fraud, dishonesty, or criminal behavior.[218] Establishing both a temporal and causal connection is essential. Without it, disciplinary bodies will not credit mental health claims—no matter how sincere—as mitigating.

VI. THE TREATMENT REQUIREMENT—WHAT DOES IT MEAN?

The third element in seeking mitigation based on mental illness is demonstrating treatment or recovery. But what qualifies as treatment or recovery, and how success is measured, remains largely vague in Massachusetts disciplinary decisions. Massachusetts case law references a variety of standards, from the "alleviation of symptoms" standard in *Roper*, to the "successful treatment" language of the Massachusetts Bar Discipline Manual, to the ABA's requirement of "demonstrated rehabilitation."[219] These varied standards not only confuse but constrain: they risk turning recovery into a gatekeeping device rather than a path toward reform.

The ABA Standards for Imposing Lawyer Sanctions require medical evidence that: (1) the respondent suffers from a mental disability; (2) the disability caused or contributed to the misconduct; (3) the respondent has

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[216] *See In re* Kydd, 38 Mass. Att'y Disc. R. 265, 6 (2022).

[217] *See id.*

[218] *In re* Balliro, 899 N.E.2d 794, 800 (Mass. 2009) (finding mitigation where the respondent's "dysfunctional psychological state was a significant contributing cause" of her misconduct); *In re* Johnson, 827 N.E.2d 206, 208–09 (Mass. 2005) (rejecting mitigation where respondent failed to demonstrate a causal relationship between personal circumstances and misconduct); *In re* Haese, 9 N.E.3d 326, 333 (Mass. 2014) (declining to apply mitigation for "multiple acts of intentional misconduct", despite claims of medical illness); *see* MBD, *supra* note 7, at 396 (stating that mental health may be considered in mitigation only where "the condition causally relates to the misconduct and only if the respondent has attempted to address the problem responsibly."); *see generally* Page Thead Pulliam, *Lawyer Depression: Taking a Closer Look at First-Time Ethics Offenders*, 32 J. LEGAL PROF. 289 (2008) (discussing the challenges first-time offenders face in raising mental health as mitigation).

[219] MBD, *supra* note 7, at 396 (directing hearing panels to consider whether the respondent has "attempted to address the problem responsibly"); *see In re* Roper, 32 Mass. Att'y Disc. R. 482, 2 (2016) (referring to the "alleviat[ion] of symptoms" as a basis for mitigation); *see* STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32 (AM. BAR ASS'N 1986) (amended 1992) (listing "rehabilitation" as a mitigating factor and requiring "demonstrate[ed] rehabilitation" in reinstatement proceedings).

made meaningful progress in recovery, shown by sustained and successful rehabilitation; and (4) the recovery is sufficient to suggest the misconduct is unlikely to recur.[220] That final element—"recovery" suggesting the conduct is "unlikely to recur"—poses particular challenges when evaluating chronic or episodic conditions such as depression, anxiety, or PTSD.

Some Massachusetts decisions invoke terms like "successful treatment" or "engagement with treatment" without articulating what either entail. The Massachusetts Bar Discipline Manual states only that an attorney must demonstrate that they have "attempted to address the problem responsibly." [221] But what constitutes a responsible attempt, or how adjudicators are to assess treatment efficacy, is left undefined.[222]

This lack of clarity creates uncertainty for both attorneys and disciplinary bodies. In *Matter of Dodge*, for example, the Board credited psychiatric testimony that the respondent had "recovered from his depression" and had "sufficient support systems to ensure he will remain emotionally healthy and able to withstand the pressures and stresses of law practice."[223] Yet, the decision offered no detail on what "recovery" entailed, whether it was based on sustained symptom remission, compliance with treatment, or other criteria. Nor did it explain how adjudicators were to verify or weigh such claims beyond accepting the psychiatrist's assurance.

A. Temporal Ambiguity: When Must Treatment Occur?

A related inconsistency concerns the timing of treatment: when must an attorney engage in treatment to count in mitigation? While the ABA Standards do not specify a required timeline, Massachusetts decisions have created conflicting expectations. In some cases, post-misconduct treatment has supported mitigation. In *Matter of Hess*, the attorney-respondent's engagement with therapy and Lawyers Concerned for Lawyers (LCL) after

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[220] *See* STANDARDS FOR IMPOSING LAWYER SANCTIONS § 9.32 (AM. BAR ASS'N 1986) (amended 1992) (listing mitigation for "mental disability or chemical dependency including alcoholism or drug abuse" and requiring: (1) "medical evidence that the respondent is affected by a . . . mental disability"; (2) that the disability caused or contributed to the misconduct; (3) that the respondent is undergoing treatment and making progress in recovery; and (4) that "recovery has arrested the misconduct" and makes it unlikely to recur); *see also* Rush, *supra* note 22, at 929–30 (summarizing the four-part test).

[221] *See* MBD, *supra* note 7, at 396 (stating that mitigation based on mental health is appropriate only where "the condition causally relates to the misconduct and only if the respondent has attempted to address the problem responsibly.").

[222] *Id.* at 398.

[223] *See In re* Dodge, 31 Mass. Att'y Disc. R. 157, 2 (2015).

the misconduct was credited as evidence of rehabilitation.[224] The court noted that Hess had suffered from untreated depression and anxiety at the time of the misconduct and emphasized his subsequent treatment efforts in ordering an 18-month suspension contingent on continued therapy.[225] Similarly, in *Matter of Roper*, the Board accepted that the attorney's anxiety and depression had contributed to her neglect of professional obligations and found that her current treatment had "alleviated" her symptoms.[226] However, the decision gave no indication of how the Board evaluated the success of that treatment, whether through documentation, medical testimony, or compliance monitoring.[227]

Yet other decisions have denied mitigation where treatment began either too long before or too long after the misconduct. In *Matter of Knight*, the Board acknowledged the attorney's depression but seemed to discount it because she was already receiving treatment at the time of the misconduct.[228] This suggests an implicit expectation that treatment, if timely and effective, should have prevented the misconduct—an assumption that overlooks the slow and often nonlinear process of mental health recovery. This inconsistency imposes a troubling double bind: if an attorney seeks treatment early, adjudicators may conclude the condition was "effectively treated" and thus not mitigating; if treatment is sought later, it may be viewed as insufficiently connected to the time of misconduct or merely strategic.

A deeper problem may underlie this confusion: the conflation of causation with chronology. Treatment that is ongoing during the misconduct may not yet be effective, especially in the case of newly diagnosed or relapsing conditions. Without standards for parsing the efficacy and evolution of treatment over time, disciplinary decisions risk punishing attorneys for the non-linear nature of mental health recovery.

B. What Counts as Successful Treatment?

The term "successful treatment" remains strikingly opaque in Massachusetts disciplinary jurisprudence. While some decisions reference symptom relief, clinical testimony, or continued participation in therapy, few specify how success is defined or measured. In *Roper*, the Board credited the attorney's treatment as having "alleviated" her symptoms, but did not

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[224] *See In re* Hess, 39 Mass. Att'y Disc. R. __, 2 (2023) (providing an example of positive engagement with LCL, mitigating the severity of sanctions).

[225] *Id.* at 2–3.

[226] *See In re* Roper, 32 Mass. Att'y Disc. R. 482, 2 (2016).

[227] *See id.*

[228] *See In re* Judith C. Knight, 39 Mass. Att'y Disc. R. __, 39 (2023) (acknowledging the respondent's major depressive disorder but declining to find mitigation, in part because the misconduct "preceded and followed the period of depression she has identified.").

elaborate on the medical basis or duration of that improvement.[229] In *Brown*, the court deemed the attorney's treatment "appropriate," but offered no further details about its nature, effectiveness, or duration.[230] Similarly, in *Dodge*, a finding of "recovery" was based on psychiatric testimony and the attorney's support network, yet the benchmarks for that recovery—whether clinical measures, sustained functionality, or subjective evaluations—were never articulated.[231]

This vagueness invites arbitrariness. Is success measured by symptom remission? Sustained engagement in therapy? Absence of relapse? Compliance with LCL recommendations? Without clear standards, both attorneys and disciplinary bodies are left to operate on impressionistic or ad hoc assessments.

A more transparent system would articulate the metrics used to evaluate treatment, including the frequency of sessions, the duration of engagement, documented symptom improvement, and formal clinical evaluations. It would also recognize that "success" in the treatment of chronic mental illness often entails management rather than cure, and stability rather than total transformation. As such, metrics must be sufficiently flexible to accommodate conditions that are episodic, relapsing, or resistant to full remission.

For example, in *Admonition 14-04*, the attorney was said to have received treatment for severe depression, but the nature, intensity, or results of that treatment were not disclosed.[232] In *Matter of Brown*, the court referred to the attorney's "current treatment" as mitigating but offered no analysis of whether or how that treatment had altered the attorney's professional behavior or likelihood of recurrence.[233] The opacity in these rulings creates a significant barrier for attorneys attempting to demonstrate that they have meaningfully addressed the root causes of their misconduct.

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[229] *In re Roper*, 32 Mass. Att'y Disc. R. at 2 (stating "[t]he respondent is in treatment that has alleviated her symptoms.").

[230] *In re* Brown, 38 Mass. Att'y Disc. R. 54, 1 (2022) (noting in mitigation, the respondent's depression and that "he is currently receiving appropriate treatment or care," but offering no details).

[231] *See In re* Dodge, 31 Mass. Att'y Disc. R. 157, 2 (2015) (relying on psychiatric testimony that the respondent had "recovered from his depression" and had "sufficient support systems to ensure he will remain emotionally healthy" but without specifying clinical benchmarks or duration of recovery).

[232] *See* 2014 ADMONITION REP., *supra* note 59, at 8–9.

[233] *See In re* Brown, 38 Mass. Att'y Disc. R. 54, 1 (2022) (noting in mitigation that "the parties cite the respondent's depression, and note that he is currently receiving appropriate treatment or care," without further discussion of its effects on behavior or recurrence).

The case of *Knight* further complicates the question by illustrating how treatment that appears "successful" may be undermined by temporality.[234] There, the Hearing Committee declined to credit the attorney's depression as mitigating in part because the misconduct both preceded and followed the period in which the respondent claimed to be effectively treated. The Committee noted that lapses "occurred significantly after early 2020, when she claims she was effectively treated for depression."[235] Again, such reasoning reflects a temporal paradox: if treatment is ongoing during the misconduct, it may be deemed ineffective; but if it occurs later, it may be too late to matter.

This binary view of treatment—as either definitively effective or insufficient—fails to reflect the nuanced and often nonlinear trajectories of mental health care. Attorneys undergoing treatment may continue to experience symptoms or impairment even while making meaningful progress. Conversely, abrupt improvement or formal program completion may not reliably signal long-term stability. As *Weekes* demonstrates, the absence of clear evidence regarding progress in treatment may lead the court to deny reinstatement, highlighting the difficulty of assessing what constitutes a sufficient showing of rehabilitation.[236]

Moreover, the individualized nature of mental health care compounds these interpretive challenges. What constitutes successful treatment for one condition may not apply to another. An attorney managing anxiety may demonstrate stability through daily medication and mindfulness practices; someone recovering from major depressive episodes may require long-term psychotherapy, lifestyle modification, and community support. Without standard benchmarks—either medical or doctrinal—Massachusetts Bar disciplinary decisions leave both attorney-respondents and their evaluators without clear guidance.

Ultimately, the lack of a uniform or even functional definition of successful treatment or recovery introduces uncertainty into the mitigation process. If the legal profession is to evaluate mental health with integrity and fairness, it must develop a more nuanced framework—one that reflects contemporary understandings of mental illness and aligns with principles of procedural justice.

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[234] *See In re* Judith C. Knight, 39 Mass. Att'y Disc. R. __, 39 (2023) (declining to credit mitigation based on depression where misconduct occurred both before and after the period of claimed effective treatment, thus undermining the temporal relevance of the condition).

[235] *Id.*

[236] *In re* Weekes, 31 Mass. Att'y Disc. R. 678, 2 (2015) (denying reinstatement after misconduct involving repeated dishonesty because the attorney failed to submit expert testimony or detailed medical documentation of his depression treatment).

C. Structural and Cultural Barriers to Treatment

When mitigation hinges on access to and demonstrable success in mental health treatment, disciplinary systems must also reckon with the structural and cultural barriers that attorneys face in seeking and maintaining care. These barriers include stigma, cost, limited geographic access to care, lack of culturally competent providers, and distrust of institutional or disciplinary interventions. When disciplinary bodies condition mitigation on documentation of effective treatment, they risk inadvertently reproducing inequalities that disproportionately disadvantage attorneys who lack access to those forms of treatment deemed legitimate or credible.

These barriers are compounded by the individualized and non-linear nature of mental health treatment. For some attorneys, particularly those with anxiety, successful treatment might involve daily medication or the use of beta blockers to manage acute symptoms. For others experiencing situational depression, treatment might involve short-term therapy, temporary medication, or lifestyle interventions such as changing jobs, altering routines, or ending harmful relationships. As *Weekes* demonstrates, the cessation of medication was itself seen as a sign of progress; however, it is easy to imagine how, in a different case, the cessation of medication might be a worrying red flag of noncompliance.[237] This example is a reminder that treatment may take multiple, shifting forms over time, and that recovery does not always track a singular, upward trajectory.

Mental health recovery is often non-linear. Conditions such as depression, PTSD, anxiety, and substance use disorders are frequently chronic, involving cycles of remission, recurrence, and relapse.[238] Recurrence or relapse is a common and expected part of recovery—not a sign of failure, but a challenge to be managed.[239] Similar findings apply to depression and

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[237] *See id.* at 4–7 (noting that "[h]e has not required any medication for the condition since 2012," and citing this as one factor supporting the petitioner's recovery and reinstatement).

[238] *See* Stephanie L. Burcusa & William G. Iacono, *Risk for Recurrence and Depression*, 27 CLINICAL PSYCH. REV. 959, 961 (2008) (explaining the difference between relapse and recurrence: "'Relapse' [is] a return of symptoms to the full syndrome criteria for an episode during remission but before recovery . . . whereas 'recurrence' [is] the appearance of a new episode after a period of recovery.").

[239] *Id.* at 959 (discussing high base rates of recurrence in major depressive disorder: "At least 50% of those who recover from a first episode of depression [will have] one or more additional episodes . . . and approximately 80% of those with a history of two episodes [will have] another recurrence."); Timothy J. Petersen et al., *The Role of Cognitive-Behavioral Therapy and Fluoxetine in Prevention of Recurrence of Major Depressive Disorder*, 34 COGNITIVE THERAPY RSCH. 13, 13 (2010) (explaining that relapse/recurrence risk persists even after successful acute treatment; treatment is designed to address that risk not eliminate it).

other mood disorders, which often recur over the course of a lifetime.[240] Demanding evidence of full remission or permanence in recovery as a condition for mitigation overlooks the clinical realities of these diagnoses.

Attorneys managing chronic depression may require long-term or even indefinite treatment, including medication, regular therapy, community support, and structural accommodations such as reduced caseloads or flexible work environments. Yet, in the absence of clear standards for what counts as "successful," courts risk interpreting ongoing treatment as evidence of instability rather than as a responsible effort to manage a long-term condition. This creates a paradox in which attorneys may be penalized for responsibly continuing the very treatment that disciplinary bodies ostensibly value.

Cultural factors further complicate this landscape. Attorneys from historically marginalized communities may face particular difficulty in finding culturally competent mental health professionals. As noted in both scholarly commentary and first-person accounts, many therapists—especially those not trained to understand the unique pressures of the legal profession—fail to meet the cultural or contextual needs of their clients. The National Task Force on Lawyer Well-Being has explicitly cited the lack of diversity and cultural humility in mental health care as a key barrier to effective support for lawyers.[241]

Financial access remains another serious constraint. Many therapists do not accept insurance, leaving attorneys—particularly solo practitioners, younger lawyers, and those with limited resources—unable to afford ongoing care. As some mental health professionals have observed, providers often decline insurance due to administrative burdens or low reimbursement rates, making private pay the default model for accessing specialized care.[242] This

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[240] *Id.*; *see also* CME INST., *Preventing Recurrent Depression: Long-Term Treatment for Major Depressive Disorder*, 9 PRIMARY CARE COMPANION J. CLINICAL PSYCHIATRY 214, 214 (2007) ("Major depressive disorder (MDD) is potentially a long-term or even lifelong illness for many patients . . . .").

[241] *See* BUCHANAN & COYLE, *supra* note 3, at 15–21 (identifying the lack of diversity and cultural humility among mental health providers as a significant barrier to attorney well-being, and calling for greater attention to culturally responsive care).

[242] Margie Ryerson, *I'm a Therapist. Here's Why I Don't Take Insurance*, SLATE (Sept. 16, 2022, 8:00 AM), https://slate.com/technology/2022/09/therapist-insurance-copay-reimbursement-affordable.html [https://perma.cc/HS5Q-RM9M] (noting that many providers decline insurance due to administrative burdens or low reimbursement rates); *see also* Zara Abrams, *How Insurance Woes Are Impacting Mental Health Care*, AM. PSYCH. ASS'N (Dec. 17, 2024), https://www.apa.org/topics/psychotherapy/insurance-mental-health-care [https://perma.cc/D96K-RR55] (explaining that low reimbursement and administrative burdens are the top reasons providers stay out of networks); Zhu & Eisenberg, *Administrative Frictions and the Mental Health Workforce*, 5 JAMA HEALTH FORUM 1 (2024) (noting that mental health clinicians face "byzantine claims processing systems" without staff support); Giuliana Grossi, *Study Highlights Disparities in Access to In-Network Mental Health Care vs Medical Care*, AM.

dynamic creates yet another layer of inequity for attorneys already under economic strain, especially those suspended or struggling with reduced caseloads.

Finally, the persistent stigma around mental health in the legal profession cannot be ignored. As documented in multiple studies and practitioner surveys, many attorneys remain reluctant to seek treatment out of concern that doing so will harm their professional reputation, undermine client confidence, or trigger disciplinary scrutiny.[243] This fear is not unwarranted. As disciplinary bodies increasingly incorporate "well-being" into their evaluative frameworks, some attorneys may experience treatment mandates not as compassionate support, but as coercive oversight—raising broader concerns about privacy, autonomy, and the entanglement between therapeutic and regulatory roles.

Taken together, these structural and cultural obstacles raise further questions about the fairness of conditioning mitigation on proof of "successful treatment." While the goal of ensuring client protection and professional integrity (and well-being) is legitimate, the standards for evaluating mental health recovery must account for the real-world barriers attorneys face in accessing care. A disciplinary regime that fails to do so risks reinforcing inequities and penalizing vulnerability rather than supporting rehabilitation.

D. The Role of Lawyer Assistance Programs

Lawyers Concerned for Lawyers (LCL), Massachusetts' non-profit Lawyer Assistance Program (LAP), plays a critical role in supporting the state's legal profession.[244] LCL offers confidential, free services to attorneys, judges, law students, and their families who are facing mental health,

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J. MANAG. CARE (Apr. 17, 2024) https://www.ajmc.com/view/low-reimbursement-rates-for-mental-health-care-linked-with-high-out-of-network-provider-use [https://perma.cc/B6UB-5EKD] (reporting that behavioral health patients are 3.5 times more likely to go out-of-network).

[243] Jerome M. Organ et al, *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. LEGAL EDUC. 116, 141–42 (2016); Patrick R. Krill et al, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 52 (2016); GRAHAM AMBROSE ET AL, MENTAL HEALTH SCREENING IN LAWYER LICENSING 5, 16 (Stanford Law School, Sept. 2024).

[244] *See* MASS. LAWS. CONCERNED FOR LAWS., https://www.lclma.org [https://perma.cc/AN47-LGKE] (explaining the Massachusetts' Lawyer Assistance Program that provides mental health and substance use support for legal professionals); *see generally* Eric C. Lang, *Going Beyond Fear in Addressing Attorney Mental Health*, 75 MERCER L. REV. 781 (2024) (discussing the evolution and current role of Lawyer Assistance Programs nationwide).

addiction, or other personal challenges that may impair professional functioning. In disciplinary matters, participation in LCL programs is frequently cited favorably when mental health is raised as a mitigating factor.

The *Massachusetts Bar Discipline Manual* describes LCL as instrumental in cases involving mental health or substance use concerns. In such cases, the BBO or SJC may recommend or require that attorneys engage with LCL as part of a broader rehabilitative sanction. From 1999 to 2017, over forty disciplinary decisions referenced LCL, reflecting its sustained presence in Massachusetts attorney discipline.[245]

In *Matter of Hess*, for example, an attorney suffering from untreated depression and anxiety at the time of his misconduct voluntarily contacted LCL and began therapy.[246] The hearing panel found this engagement mitigating and emphasized the attorney's responsible efforts to manage his condition. Similarly, in *Matter of Manning*, the SJC considered the attorney's consultation with LCL and compliance with its treatment recommendations as part of its mitigation calculus, despite the seriousness of the underlying misconduct.[247]

1. Mandatory Engagement and LCL as a Disciplinary Tool

In some cases, engagement with LCL is not merely suggested but required. Disciplinary sanctions and reinstatements involving mental health mitigation often incorporate treatment conditions, including mental health evaluations and ongoing therapy, sometimes coordinated through LCL

For example, after more than a decade of disbarment, one attorney was reinstated on the condition that he regularly attend both Alcoholics Anonymous and LCL meetings for two years, reflecting the court's view that sustained community support was integral to his rehabilitation.[248] For the

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[245] *See* MBD, *supra* note 7, at 396.

[246] *See In re* Hess, 39 Mass. Att'y Disc. R. __, 2 (2023).

[247] *See In re* Manning, 39 Mass. Att'y Disc. R. __, 3 (2023).

> [H]e suffered from major depression and had a general anxiety disorder which negatively impacted and complicated his legal practice but was untreated at the time of the events. The respondent voluntarily consulted with Lawyers Concerned for Lawyers and had followed through with their recommendations for continued mental health treatment. The parties explained their agreement to recommend a reinstatement hearing by noting that it was intended to ensure that the respondent's mental health issues were addressed and that he would be fit to resume practice upon readmission.

Id.

[248] *In re* Boudreau, 30 Mass. Att'y Disc. R. 30, 9 (2014) ("AA and LCL: The petitioner shall for two years following his reinstatement continue regularly to attend meetings of Alcoholics Anonymous and Lawyers Concerned for Lawyers. As noted above, the petitioner intends to continue his participation in those programs.").

purposes of another attorney's reinstatement, the conditions were more intensive: not only was he required to continue therapy with his psychologist, but he also had to participate in LCL group meetings for two years, with both his therapist and LCL reporting directly to Bar Counsel, ensuring a dual layer of accountability and oversight.[249]

Other cases also illustrate how LCL has become a routine mechanism for ensuring both recovery and oversight. In one matter, the SJC stayed a three-month suspension on the express condition that the attorney obtain an evaluation from LCL, marking the program as the entry point for addressing his neglect and personal difficulties.[250]

More recently, in another petition for reinstatement, the hearing panel noted approvingly the attorney's long-term recovery but nonetheless recommended continued bi-weekly LCL group participation for one year as a condition of reinstatement, demonstrating the persistence of monitoring even after extended sobriety.[251] In a similar fashion, in *Matter of Roper*, the SJC ordered that suspension be contingent on the attorney's continued consultation with LCL and compliance with its recommendations.[252]

Finally, in a 2023 suspension, the conditions again placed LCL at the center: the attorney was required to cooperate with an assessment and follow recommendations not only from LCL but also its Law Office Management Assistance Program, underscoring the program's role in addressing both personal wellness and law office management issues.[253]

Together, these cases show that the Court does not treat LCL involvement as optional or symbolic; instead, it deploys LCL as both a rehabilitative support and a monitoring tool, tailoring the intensity of conditions to the seriousness of the misconduct and the attorney's demonstrated progress.

Although these measures reflect a rehabilitative spirit, they also mark a shift: rather than a self-motivated or voluntary act, LCL participation becomes a condition of professional reentry, and failure to comply may delay

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[249] *In re* Ostrovitz, 31 Mass. Att'y Disc. R. 486, 9 (2015).

[250] *In re* Dillon Jr., 34 Mass. Att'y Disc. R. 83, 2 (2018).

[251] *In re* Gilpatric, 39 Mass. Att'y Disc. R. __, 18 (2023).

[252] *In re* Roper, 32 Mass. Att'y Disc. R. 482, 2 (2016).

[253] *In re* LaPointe, 39 Mass. Att'y Disc. R. __, 1 (2023); *see also* MASS. LAWS. CONCERNED FOR LAWS.: ABOUT, https://www.lclma.org/about/ [https://perma.cc/6NBT-LTGQ] (explaining the Law Office Management Assistance Program works "to assist attorneys with technology, marketing, ethics, and practice management needs . . . . [as well as] clients who are returning to practice or are involved in disciplinary matters.")

or prevent reinstatement. This could threaten to transform LCL from a voluntary support resource into a quasi-monitoring mechanism.[254] Critics have raised several concerns about the entanglement between LAPs and the disciplinary process.[255] While LCL services are confidential, the blurring of lines between voluntary support and disciplinary compliance may undermine trust in the confidentiality of this practice. The close collaboration between LAPs and bar authorities could chill voluntary help-seeking, especially if attorneys fear that engagement might be construed as evidence of impairment rather than a proactive health measure.[256]

Barriers to care—such as lack of culturally competent providers, financial limitations, and stigma—may further restrict access to LCL and similar programs. Although LCL offers valuable support, it cannot address all needs, particularly for attorneys from historically marginalized communities who may experience heightened mistrust of institutional interventions or lack adequate insurance to pursue long-term treatment outside the program.

Moreover, the expectation that attorneys demonstrate recovery or treatment can set an unattainable standard, especially for chronic or relapsing conditions. Scholars and medical providers caution against the use of linear recovery models in professional disciplines, emphasizing that relapse is often a part of long-term recovery for conditions such as substance use disorder or major depression.[257]

2. Barriers to Effective Treatment and Critiques of the Role of LCL

While LAPs such as Lawyers Concerned for Lawyers provide valuable services to attorneys in crisis, substantial barriers to effective treatment persist. LAPs are not clinical providers and cannot deliver individualized, consistent care to every attorney who contacts them. Instead, they often serve as supportive intermediaries, offering referrals and short-term counseling.

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[254] *See* Lawson, *supra* note 2, at 124 (criticizing LAPs for "encourage[ing] peer identification and reporting of mental health disorders and disabilities in their coworkers to their employers and LAPs."); Rush, *supra* note 22, at 931–32.

[255] *See* Fred C. Zacharias, *A Word of Caution for Lawyer Assistance Programming*, 18 GEO. J. LEGAL ETHICS 237, 237–38 (2004) (raising concerns about the tension between LAPs' therapeutic role and their integration into regulatory or disciplinary structures); Lang, *supra* note 241, at 835–37.

[256] *See* Zacharias, *supra* note 252, at 239–40 (raising concerns that mandatory or disciplinary use of LAPs may deter voluntary engagement due to confidentiality concerns and perceptions of surveillance); Lang, *supra* note 241, at 835–37 (noting that LAPs can inadvertently reinforce stigma or distrust, especially when closely aligned with disciplinary authorities).

[257] *See* CME INST., *supra* note 240, at 214 (discussing the ongoing and potentially "indefinite amount of time" treatment may be required for certain patients); Burcusa & Iacono, *supra* note 238, at 979–81 (explaining depression is a highly recurrent disorder and study conclusions); Andrew A. Nierenberg et al., *Prevention of Relapse and Recurrence in Depression: The Role of Long-Term Pharmacotherapy and Psychotherapy*, 64 J. CLINICAL PSYCHIATRY, SUPP. 15, 13 (2003) (noting that depression often follows a chronic or recurrent course requiring long-term care).

But access to long-term, culturally competent care remains uneven. Attorneys may face significant financial barriers, especially those without insurance, with high deductibles, or who are unemployed due to suspension.[258] For attorneys of color, LGBTQ+ attorneys, and others from marginalized backgrounds, the lack of therapists who understand their experiences may hinder the therapeutic relationship and reduce the likelihood of sustained treatment success.[259]

While LCL plays a meaningful role in supporting attorneys through these challenges, scholars have raised important critiques of its role within the disciplinary process. Most significantly, LCL may act as a gatekeeper whose assessments and recommendations can heavily influence the outcome of disciplinary proceedings. Critics warn that LAPs often hold significant sway in determining whether an attorney has sufficiently "addressed" their condition—even though these programs are not neutral forensic evaluators and may lack consistency in their assessments.[260] Over two decades ago, prominent legal ethics scholar Fred Zacharias warned that lawyer assistance programs occupy an uneasy space between rehabilitative support and disciplinary enforcement, creating inherent tension in their mission.[261] More recently, other scholars have observed that LAPs exercise "considerable discretion, limited accountability, and sometimes absolute civil immunity[,]" and that they may act as "discretionary systems of discipline," generating conflicts of interest when intertwined with regulators.[262]

LCL remains an essential resource in Massachusetts, and its involvement often facilitates a pathway to successful treatment and rehabilitation. However, disciplinary systems must confront the limitations of relying on LCL as both a support service and a quasi-evaluator of recovery. The effectiveness of mental health recovery should not be reduced to LCL

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[258] *See* Hayley Easton Neal, *Evaluating the New York State Bar Association Lawyer Assistance Committee Model Policy*, 24 GEO. J. LEGAL ETHICS 733, 738–39 (2011) (noting that affordability of treatment services is one of the four critical factors necessary to ensure impaired lawyers seek help, alongside availability, information, and confidentiality).

[259] *See* Stanley Sue et al., *The Case for Cultural Competency in Psychotherapeutic Interventions*, 60 ANN. REV. PSYCH. 525, 525–27 (2009) (arguing that culturally competent mental health services are critical for effective treatment and engagement, particularly for clients from marginalized communities).

[260] *See* Lawson, *supra* note 2, at 93.

[261] *See* Zacharias, *supra* note 252, at 241–42 (arguing that LAPs face an inherent tension between assisting impaired attorneys and fulfilling the bar's disciplinary mandate).

[262] *See* Lawson, *supra* note 2, at 72–73, 101 (observing that LAPs may refer lawyers to preferred treatment centers without oversight).

participation alone, nor should it be assessed according to narrow or medically unrealistic definitions of treatment.

E. Toward a More Realistic and Equitable Understanding of Recovery

Disciplinary systems often implicitly adopt a "cure" model: mitigation is granted when an attorney proves that their mental health condition has been "successfully treated" and is unlikely to recur. For the purposes of protecting the public and preventing future misconduct, such an expectation is understandable. But this model is both clinically inaccurate and functionally inequitable. Depression, anxiety, substance use disorders, and trauma-related conditions are typically managed, not cured.[263] Recovery may include symptoms that persist or reemerge under stress. These are not signs of moral failure or professional unfitness but expected features of long-term mental health care.

Rather than requiring definitive proof of cure, disciplinary standards should reflect a recovery-oriented management. Many contemporary health organizations define recovery as "a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential."[264] This framework centers functioning, self-determination, and ongoing care—not symptom elimination or a one-time transformation. Applying a similar lens in the disciplinary context would reduce the pressure on attorneys to perform a fixed narrative of success and instead validate continued engagement in treatment, even amid setbacks.

Massachusetts disciplinary decisions reflect the complexity of considering treatment and recovery with regard to mental health. In some cases, sustained participation in support programs—such as LCL, therapy, or 12-step groups—has been accepted as sufficient for mitigation. For example, in *Matter of Ostrovitz,* the court cited the attorney's continued therapy and engagement with recovery groups as significant mitigating factors, even though his condition had not been entirely resolved.[265] The case suggested that responsible management—not total recovery—was the relevant benchmark.

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[263] *See, e.g.*, *Depression*, HARV. MED. SCH. HARV. HEALTH PUBL'G (May 17, 2022), https://www.health.harvard.edu/topics/depression [https://perma.cc/4XUQ-7ZCH] (discussing continuation and maintenance phases of treatment).

[264] *See Recovery and Recovery Support*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., https://www.sam.hsa.gov/substance-use/recovery [https://perma.cc/QV6A-Y89J] (defining recovery as quoted); *see also* Larry Davidson & Katherine Ponte, *Serious Mental Illness Recovery: The Basics*, NAT'L ALL. ON MENTAL ILLNESS, https://www.nami.org/personal-stories/serious-mental-illness-recovery-the-basics [https://perma.cc/QBV2-3JCG] (describing recovery as an individualized, non-linear process of managing symptoms and building a meaningful life).

[265] *See In re* Ostrovitz, 35 Mass. Att'y Disc. R. 486, 5 (2015) (crediting attorney's ongoing therapy and LCL participation in support of reinstatement, despite prior substance use and depression during his wife's terminal illness).

Nonetheless, some decisions continue to hinge on whether the attorney can present evidence of recovery. Attorneys may experience relapse while still responsibly managing their illness through therapy, medication, or support groups. In such instances, the disciplinary system should evaluate the attorney's consistent effort and compliance with treatment, not whether they meet an arbitrary standard of "cure."

Inflexible definitions of success may also have a chilling effect. If attorneys believe that only a flawless recovery narrative will be accepted, they may hesitate to seek help, disclose their condition, or be honest with their psychiatrists or care providers. This undermines the broader goals of wellness promotion and early intervention. By contrast, an emphasis on management, support, and professional functionality could foster a healthier legal culture—one in which help-seeking is seen not as a liability, but as a sign of responsibility.

LCL's ongoing role in supporting attorneys underscores this point. Participation in therapy, peer support, or structured recovery should be viewed as a positive step, even if symptoms persist. A more equitable and clinically grounded approach would treat success not as perfection but as progress: consistent engagement in appropriate care, professional conduct, and a demonstrated commitment to well-being.

VII. REINSTATEMENT: CAN LAWYERS REDEEM THEMSELVES?

When an attorney seeks reinstatement after suspension or disbarment, they bear the burden of proving not only that their mental health condition has been successfully treated but also that they are presently fit to resume the practice of law. Reinstatement is not automatic; it requires compelling, objective evidence that the attorney has addressed the root causes of their misconduct and that the misconduct is unlikely to recur. This includes demonstrating recovery through expert testimony, medical records, and personal insight into their mental health struggles and professional failings.

As the Massachusetts Bar Discipline Manual explains, attorneys seeking reinstatement following an established mental health challenge must present competent evidence that their mental health condition is under control and that they can practice law without endangering the public or the administration of justice.[266] Successful treatment, while essential, is not, by itself, sufficient; petitioners must also demonstrate that they have developed

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[266] *See* MASS. SUP. JUD. CT. r. 4.01 § 18(6)(e) (Mass. Sup. Jud. Ct. 2025) (stating that a lawyer seeking reinstatement must demonstrate that their physical or mental condition does not adversely affect their ability to practice law and that they possess the competency and learning in law required for admission to practice).

meaningful insight into the circumstances surrounding their misconduct and have implemented safeguards to avoid future violations.[267]

A. Reinstatement Granted: Evidence of Successful Treatment

Reinstatement is more likely when attorneys present both robust evidence of treatment and clear, credible insight into the origins of their misconduct. Courts require more than proof of therapy attendance—they seek a demonstrated understanding of how the condition contributed to misconduct and what steps the attorney has taken to ensure accountability and sustained recovery.

In *Matter of Dodge*, the petitioner presented persuasive evidence of recovery from severe depression, including a history of multiple hospitalizations, ongoing psychological treatment, and letters of support. In addition to this evidence, however, the hearing panel credited Dodge's testimony as "articulate, thoughtful, introspective, and lucid about the origins and extent of his depression."[268] His treating psychologist also testified to the attorney's progress, and his ex-wife offered a letter attesting to his "recovery from his disease [of depression]."[269] The Supreme Judicial Court concluded that Dodge had met his burden of demonstrating that his condition no longer adversely affected his ability to practice law.[270]

Similarly, in *Matter of Ostrovitz,* the court emphasized the petitioner's "moral reform," ongoing treatment for depression and substance use disorder, and a demonstrated support system. His therapist testified that he had maintained stability despite recent life stressors and was unlikely to relapse. [271] The court highlighted both the objective evidence and the petitioner's personal understanding of his illness as decisive factors in the decision to reinstate.[272] The court emphasized the therapist's testimony and the petitioner's demonstrated understanding of his condition as pivotal to the reinstatement decision.

In *Matter of Curtis, Jr.*, the court credited the petitioner's participation in Alcoholics Anonymous, LCL, and regular psychotherapy. Curtis was proactive during his suspension, engaging in long-term treatment and

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[267] *See* MBD, *supra* note 7, at 396 (noting that attorneys seeking reinstatement must demonstrate not only that their mental health condition is under control but also that they have developed insight into the circumstances leading to their misconduct and have established safeguards to prevent recurrence).

[268] *See In re* Dodge, 31 Mass. Att'y Disc. R. 157, 3 (2015) (affirming recovery from major depressive disorder and crediting petitioner's demonstrated understanding and accountability steps).

[269] *Id.* at 5.

[270] *Id.* at 8.

[271] *See In re* Ostrovitz, 31 Mass. Att'y Disc. R. 486, 1 (2015).

[272] *Id.*

developing insight into how his untreated depression and alcoholism contributed to his misconduct. His testimony demonstrated moral rehabilitation and a credible plan for maintaining recovery, leading the court to grant reinstatement.[273] The court specifically noted that Curtis did not passively wait for his suspension to expire but proactively sought out long-term treatment.

Massachusetts courts also frequently impose conditions on reinstatement to monitor ongoing treatment and reduce the risk of recurrence. In *Matter of Gilpatric*, for instance, reinstatement was granted on the condition that the attorney meet bi-weekly with LCL for one year. This reflected the court's view that continued oversight was a reasonable and necessary safeguard for both the attorney's fitness to practice and his recovery.[274]

B. Reinstatement Denied: Failure to Demonstrate Successful Treatment and Insight

Despite these successes, reinstatement is frequently denied when petitioners fail to provide sufficient evidence of mental health treatment, insight, or reform. Massachusetts courts consistently emphasize that general assertions of recovery or treatment are insufficient—petitioners must provide detailed, objective evidence. In *Matter of Oscar W. Weekes, Jr.*, the court denied reinstatement because the petitioner failed to submit expert testimony or detailed medical documentation of his depression treatment.[275] While Weekes had participated in therapy, the court was troubled by inconsistencies in his account and by his limited understanding of the ethical implications of his conduct. His misconduct involved repeated dishonesty, and without convincing evidence of insight or rehabilitation, the court found reinstatement unwarranted.[276]

Likewise, in *Matter of William C. McPhee*, the petitioner participated in therapy and engaged with LCL but failed to submit expert testimony or provide consistent narratives of his progress.[277] The court found that his

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[273] *See In re* Curtis, 32 Mass. Att'y Disc. R. 83, 8–9 (2016).

[274] *See In re* Gilpatric, 39 Mass. Att'y Disc. R. __, 18 (2023) (granting reinstatement conditioned on continued bi-weekly participation with LCL for one year).

[275] *See In re* Weekes, 31 Mass. Att'y Disc. R. 678, 8–9 (2015).

[276] *Id.*

[277] *In re* McPhee, 34 Mass. Att'y Disc. R. 315, 19 (2018) ("We were given no evidence from the petitioner's therapist or another professional that he has, in fact, recovered from depression or has at least made progress toward that goal. That type of evidence is essential to a conclusion that he has.").

treatment, while commendable, lacked the objective support necessary to establish readiness to return to practice.[278] The absence of clarity regarding his insight and stability rendered reinstatement inappropriate.[279] Although he had participated in ongoing therapy and engaged with LCL, the court found that his inconsistent accounts and lack of clear insight into his condition undermined his reinstatement claim.[280] The court emphasized that while treatment efforts were commendable, without objective evidence demonstrating stability and accountability, reinstatement could not be granted.[281]

One case, *Matter of Ilya Ablavsky,* illustrates the complexity of mental health treatment and reinstatement. The Panel detailed its "Concerns About the Petitioner's Mental Health" in a manner understandable to those charged with protecting the public from attorney misconduct, while also conveying the challenges faced by attorney-applicants seeking reinstatement.[282] For instance, the attorney-applicant—at the encouragement of his treating psychiatrist—wrote emails playing out an urge to bribe judges, without ever sending them, as a form of therapy.[283] While it is understandable that the Panel would find these impulses troubling, it is also easy to imagine how the applicant would feel frustrated that they are being "punished" for engaging in a therapeutic behavior recommended by their doctor. Additionally, the Panel expressed concern that the applicant occasionally needed to take breaks from work—again, while it is reasonable for the court to express concern, it could also be viewed as admirable self-awareness and a form of self-care for the applicant to identify the need for and take such breaks.[284]

Even if not the intended result, it seems plausible that another lawyer reading this decision might hesitate to take their own breaks from practice for fear it would be perceived as a failure of fitness for practice. While the court does indicate that part of its concern was the manner in which the

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[278] *Id.* ("The petitioner has not met his burden of convincing us that he has recovered from the emotional conditions that contributed to his misconduct, and that he is not likely to reoffend.").

[279] *See id.* at 29.

[280] *Id.* ("[He] fail[s] to understand, or to explain, the causes of his misconduct.").

[281] *Id.* While focused on substance use rather than mental health, *In re Gomez* similarly illustrates how a respondent-attorney's lack of insight into the root causes of misconduct can weigh heavily against reinstatement. *See In re* Gomez, 35 Mass. Att'y Disc. R. 202, 9 (2019) (denying reinstatement where petitioner "failed to maintain sobriety during the period of suspension," showed a "lack of self-reflection and self-awareness," and "has not proposed a strategy for dealing with work stress he cannot avoid"; despite some treatment efforts, "he was not seeking insight and resolution," and "appears to intend to rely on the same strategy of escape and isolation that led to his increasing use of alcohol and eventually crack cocaine.").

[282] *See In re* Ablavsky, 40 Mass. Att'y Disc. R. __, 9 (2024).

[283] *Id.*

[284] *Id.* at 9–10.

applicant handled the break (rather than the break itself), the Panel could've made clearer that the inadequate procedure for dealing with breaks was the concern, not the breaks themselves.[285] This is not to question the Panel's finding in this matter, where there was a lengthy history of misconduct and discipline, but rather to highlight the complex, non-linear path of recovery and the way expectations of treatment can be unclear or confusing to applicants and attorneys alike. Importantly, in conclusion, the Panel noted that "we are not holding that we cannot readmit to practice someone with active mental illness. We recognize that many lawyers with mental health challenges practice effectively and uneventfully, and that numerous conditions, mental as well as physical, require regular medication for their management."[286]

Across these cases, one consistent theme emerges: successful reinstatement depends not only on evidence of treatment but also on the petitioner's insight into their condition and its impact on their professional conduct.[287] Courts look for petitioners who can demonstrate self-awareness, accountability, and a clear plan for sustaining recovery.[288] This emphasis on insight reflects the court's desire to ensure that attorneys not only overcome their mental health challenges but also understand how these challenges contributed to misconduct.[289] Without this understanding, the risk of recurrence remains too great. Consequently, conditions such as continued participation in LCL, therapy, and regular monitoring are often imposed to safeguard long-term recovery and protect the public interest.[290]

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[285] *See id.* at 9.

[286] *See id.* at 12; *In re* Ostrovitz, 31 Mass. Att'y Disc. R. 486, 491–92 (2015) (permitting reinstatement, citing doctor's testimony that petitioner is no longer depressed or drug addicted and is not likely to relapse).

[287] *See, e.g.*, *In re* Ablavsky, 40 Mass. Att'y Disc. R. __, 2 (2024) (noting that an attorney seeking reinstatement must demonstrate moral fitness, which includes showing insight into past misconduct and establishing safeguards to prevent recurrence).

[288] *See* Bruce Green & Jane Campbell Moriarty, *Rehabilitating Lawyers: Perceptions of Deviance and Its Cures in the Lawyer Reinstatement Process*, 40 FORDHAM URB. L. J. 139, 154 (2012) (noting that courts often require petitioners to demonstrate insight into past misconduct and to establish safeguards to prevent recurrence).

[289] *See generally In re* Zankowski, 35 Mass. Att'y Disc. R. 633 (2019) (emphasizing the necessity for attorneys to demonstrate genuine insight into their misconduct and its causes to ensure such behavior will not recur).

[290] *See In re* MacCallum, 24 Mass. Att'y Disc. R. 450, 3 (2008) (imposing a four-month suspension with conditions including a two-year monitoring agreement with Lawyers Concerned for Lawyers and a two-year financial monitoring agreement); *see In re* Ablavsky, 40 Mass. Att'y Disc. R. __, 19–20 (2024) ("We recognize that it is not at all uncommon for

Massachusetts courts have made clear that reinstatement is not a right but a privilege, contingent upon demonstrating that the attorney has fully addressed the issues that led to their disciplinary sanction.[291] This evidence must be objective, such as medical records, expert testimony, and personal reflections that show accountability and growth.[292] Courts expect attorneys to take proactive steps toward sustained treatment and professional rehabilitation.[293] Ongoing engagement with support programs like LCL, combined with personal insight and evidence of reform, remains critical to the reinstatement process. Without these, courts are unlikely to find that an attorney is ready to return to the practice of law.

VIII. IS ATTORNEY DISCIPLINE DOING ITS JOB?

The foundational purposes of attorney discipline are essential to understanding the role of mental health in the disciplinary process. At their core, disciplinary systems aim to: (1) protect the public, (2) preserve the integrity of the legal system, and (3) maintain public confidence in the legal profession.[294] These purposes, repeatedly affirmed in case law, professional

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reinstatement to depend on various conditions of/restrictions on practice, or compliance with a mental health regimen.") (citing *In re* Gomez, 39 Mass. Att'y Disc. R. __ (2023) (allowing reinstatement on the condition that the lawyer continues therapy for two years, with the therapist checking in with bar counsel; additionally, the lawyer must attend MCLE, enter into a two-year mentoring agreement, submit to monthly drug tests for one year, contact LCL to participate in a support group, and allow a LOMAP audit of their practice)); *see also In re* Willis, 37 Mass. Att'y Disc. R. 532 (2021) (allowing reinstatement).

[291] *See In re* Feeney, 31 Mass. Att'y Disc. R. 184, 1 (2015) (stating that a petitioner for reinstatement to the bar bears the burden of proving that they possess "the moral qualifications, competency, and learning in the law required for admission to practice law in this Commonwealth, and that [their] resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.").

[292] *See* MBD, *supra*, note 7, at 481 (noting that attorneys seeking reinstatement must provide objective evidence). Objective evidence includes medical records and expert testimony——to demonstrate that their mental health condition is under control and that they can practice law without jeopardizing public trust or client interests. *Id.*

[293] *See In re* Ablavsky, 40 Mass. Att'y Disc. R. __, 12 (2024) (acknowledging that recovery from mental health challenges is often complex and non-linear, and emphasizing the expectation that attorneys take proactive steps toward sustained treatment and professional rehabilitation).

[294] *See* STANDARDS FOR IMPOSING LAWYER SANCTIONS § 1.1 (AM. BAR ASS'N 1986) (amended 1992) (stating that the goals of lawyer discipline are to protect the public, the administration of justice, and the legal profession). *See also In re* Koyste, 111 A.3d 581, 589 (Del. 2015) (noting that the objectives of lawyer discipline include protecting the public, preserving the integrity of the legal system, and deterring similar misconduct); Att'y Grievance Comm'n v. Barnett, 102 A.3d 310, 319 (Md. 2014) (emphasizing that the purpose of sanctioning a lawyer is to protect the public and maintain confidence in the legal profession); *In re* Torre, 127 A.3d 690, 696 (N.J. 2015) (asserting that attorney disciplinary systems aim to protect the public and preserve confidence in the bar); *In re* Disciplinary Action Against Nassif, 547 N.W.2d 541, 544 (N.D. 1996) (citing the primary purpose of disciplinary processes as the protection of the public); State *ex rel.* Oklahoma Bar Ass'n v. Demopolos, 352 P.3d 1210, 1213 (Okla. 2015) (highlighting that protecting the public and purifying the bar are the primary purposes of

standards, and disciplinary manuals, shape how misconduct is investigated and sanctioned.[295] Thus, any consideration of mental health as a mitigating factor must be evaluated in light of these guiding objectives.

The ABA Joint Committee on Professional Sanctions and the SJC emphasize that the foremost purpose of discipline is to protect the public from attorneys who may pose a risk due to incompetence, dishonesty, or impaired judgment.[296] The integrity of the profession—and the public's confidence in it—depends on consistent accountability.[297] As the Supreme Judicial Court has reiterated, discipline is not about retribution; it is about ensuring that the legal system remains fair, reliable, and trustworthy. Sanctions are intended to safeguard the public, not punish the attorney per se.[298]

This framing, however, raises a critical question: Does consideration of mental health as a mitigating factor help advance these purposes? Can the disciplinary system protect the public while also recognizing that conditions like depression or anxiety may have impaired an otherwise fit attorney's

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disciplinary proceedings); *In re* Discipline of Reynolds, 762 N.W.2d 341, 352 (S.D. 2009) (stating that attorney disciplinary processes intend to protect the public and preserve the integrity of the legal profession); *In re* Cottingham, 423 P.3d 818, 827 (Wash. 2018) (en banc) (noting that a primary purpose of the attorney disciplinary system is to protect the public and maintain the integrity of the legal profession).

[295] *See* Rachel Tarko Hudson, Note, *Pick Your Poison: Abuse of Legal Versus Illegal Substances as Mitigation in Attorney Disciplinary Cases*, 22 GEO. J. LEGAL ETHICS 911, 912 (2009) (discussing the purposes of attorney discipline); *In re* Curry, 880 N.E.2d 388, 402 (Mass. 2008) (stating the purpose of attorney disciplinary rules and proceedings is to protect the public and maintain its confidence in the integrity of the bar and the fairness and impartiality of the legal system); *In re* Foster, 215 N.E.3d 394, 413 (Mass. 2023) (stating the appropriate level of attorney discipline is that which is necessary to deter other attorneys and to protect the public); *In re* Moore, 812 N.E.2d 1197, 1202 (Mass. 2004) (stating the primary factor in determining the appropriate sanction in an attorney disciplinary action is the effect upon, and the perception of, the public and the bar).

[296] *See MBD*, *supra* note 7, at 1 ("The purpose of lawyer discipline proceedings is to protect the public . . . ."); *In re* Connolly Foster & others, 39 Mass. Att'y Disc. R. __, 36 (2023) ("The purpose of bar discipline is to protect the public and maintain confidence in the integrity of the bar and the fairness and impartiality of our legal system."); *In re* Curry, 450 Mass. 503, 520–21 (2008). Accordingly, "[t]he appropriate level of discipline is that which is necessary to deter other attorneys and to protect the public." *In re* Zak, 476 Mass. 1034, 1038 (2017) (quoting *In re Curry*, 450 Mass. at 520–21).

[297] *See In re Curry*, 450 Mass. at 520 ("The purpose of the disciplinary rules and accompanying proceedings is to protect the public and maintain its confidence in the integrity of the bar.").

[298] *See id.* at 520–21; *In re Foster & others*, 39 Mass. Att'y Disc. R. __, 39 (2023) ("[W]e keep in mind that the disciplinary rules exist to 'protect the public and maintain its confidence in the integrity of the bar and the fairness and impartiality of our legal system.'").

professional judgment? Does mitigation in such cases reflect compassion without compromising accountability?

Much of attorney discipline is grounded in a forward-looking analysis—focused not only on what harm occurred, but on whether the attorney is likely to repeat the misconduct. This rehabilitative logic opens the door to considering mental health. If an attorney's misconduct was tied to a treatable condition, and they have since obtained effective care, does that reduce the risk of recurrence? If so, mitigation may enhance rather than hinder public protection.

Yet this rationale is not without critics. Some argue that emphasizing mental health shifts attention away from client harm and toward the attorney's circumstances, thereby blurring the line between explanation and excuse.[299] By focusing on the causes of misconduct rather than its consequences, mitigation may appear to minimize the seriousness of the violation. Critics worry that this could erode public confidence in the profession—particularly if clients harmed by impaired attorneys see those attorneys return to practice with limited sanction.[300]

Ultimately, the question is not whether mental health mitigation is appropriate in the abstract, but whether it can be integrated into the disciplinary system in a way that supports the system's core purposes. Can a more consistent, transparent approach to evaluating mental health claims help ensure that discipline remains both fair and protective? Can accountability and compassion coexist in the service of the public good?

A. Protection of the Public and Encouraging Treatment

Concerns about public protection have been cited as reasons to resist treating mental health as a mitigating factor.[301] However, many argue that acknowledging and addressing mental health issues can actually enhance

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[299] *See* Zacharias, *supra* note 252, at 239–40 (arguing that linking lawyer assistance programs with mitigation potentially undermines the disciplinary system's deterrent, punitive, and protective functions and may lead disciplinary bodies to overlook the misconduct itself); Rush, *supra* note 22, at 947–48 (noting that mental health-based mitigation risks being perceived as excuse rather than explanation and may provoke skepticism within disciplinary proceedings).

[300] *See* Rush, *supra* note 22, at 947–49 (noting concerns that the legal profession's increasing focus on impairment mitigation may be perceived as excusing serious misconduct and thus fail to maintain public confidence); *see also* Zacharias, *supra* note 252, at 244–45 (arguing that mitigation based on impairment may divert attention from the harm to clients and public protection).

[301] *See* Zacharias, *supra* note 252, at 244–45 (warning that mental health mitigation may divert attention from client harm and undermine the disciplinary system's deterrent, punitive, and protective functions); Rush, *supra* note 22, at 947–49 (noting that impairment-based mitigation may appear to excuse serious misconduct and thereby erode public confidence in the legal profession).

public safety in the long term.[302] If an attorney's misconduct stems in part from an untreated or undertreated condition, then encouraging treatment and supporting recovery can reduce the risk of future violations. From this perspective, mental health-based mitigation is not an act of leniency but a pragmatic approach to prevention.

Massachusetts disciplinary authorities, including the SJC and the BBO, have recognized this logic.[303] Rehabilitation can be grounds for mitigation when attorneys demonstrate sustained commitment to treatment and recovery. In such cases, the disciplinary process functions not only to hold attorneys accountable but also to support their return to ethical and competent practice. As several cases show, successful treatment—combined with insight and stability—can restore professional fitness and protect the public by addressing the root causes of misconduct.[304]

In this way, mental health treatment becomes a mechanism for public protection. Attorneys who engage in therapy, participate in group or support programs, meet with medical providers, and develop insight into their impairments (and even law firm management practices) are often better equipped to avoid future misconduct. Encouraging treatment supports the disciplinary system's long-term goal: ensuring that attorneys who return to practice do so responsibly and without posing ongoing risks to clients or the justice system.

B. Restorative Justice and Public Confidence

Another central goal of attorney discipline is to preserve public confidence in the legal profession. The disciplinary process is meant to demonstrate that the profession takes misconduct seriously—that it upholds its ethical standards, safeguards the public, and disciplines its members

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[302] *See* AM. BAR ASS'N, *ABA and Krill Strategies Launch New Lawyer Mental Health Research Project* (June 24, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/06/aba-krill-lawyer-mental-health-project [https://perma.cc/D8MV-6FV5] (conducting national research to "mitigate impairment risk, and increase public trust and confidence in our legal system"); *see* BUCHANAN & COYLE, *supra* note 3, at 7 (warning that untreated lawyer burnout and mental health conditions "reveal that too many lawyers . . . are incompatible with a sustainable legal profession . . . rais[ing] troubling implications for . . . public trust.").

[303] *See* BUCHANAN & COYLE, *supra* note 3, at 29.

[304] *See In re* Curtis, Jr., 32 Mass. Att'y Disc. R. 83, 4–6 (2016) (crediting petitioner's long-term recovery efforts, insight into misconduct, and moral rehabilitation); *In re* Dodge, 31 Mass. Att'y Disc. R. 157, 6–8 (2015) (finding reinstatement appropriate where petitioner demonstrated insight and recovery from depression); *In re* Ostrovitz, 31 Mass. Att'y Disc. R. 486, 7 (2015) (emphasizing that petitioner "demonstrated reform").

appropriately.[305] However, this goal is not always achieved by traditional disciplinary approaches. Critics argue that the current system is overly formalistic, focused on rule violations and sanctions, with little regard for the harm suffered by clients or the perspectives and experiences of the public.[306]

In response, some have proposed incorporating principles of restorative justice into attorney discipline. [307] Restorative justice emphasizes accountability, repair, and reintegration. In the context of legal ethics, this might mean encouraging attorneys to acknowledge harm, make amends where possible, and take steps to rebuild trust—with clients, colleagues, and the public. Rather than treating mental health as an excuse for misconduct, a restorative approach would center it as part of a broader process of repair and rehabilitation.

This model could align particularly well with cases where the misconduct stems from impairments beyond the attorney's full control, such as depression, substance use disorders, or PTSD. When attorneys engage in meaningful treatment, express remorse, and work to rebuild their professional standing, restorative justice offers a framework for accountability that does not rely solely on exclusion or punishment.

However, such an approach is not without complications. Disciplinary proceedings must balance transparency and public accountability with the attorney's right to privacy—especially when sensitive medical or mental health information is involved. Many Massachusetts attorney discipline dispositions are anonymized, and proceedings often involve confidential records or closed hearings. This can limit public understanding of the rationale for mitigation and may make it harder to convey that the profession is appropriately addressing misconduct. Moreover, complainants—often harmed clients—typically have no formal role in the process, raising questions about whether the system adequately recognizes or addresses the harm they experienced.

Ultimately, integrating restorative justice principles into attorney discipline would require careful and significant structural and cultural change. But it offers a promising direction worth at least considering—one in which mental health mitigation is not seen as a loophole or leniency, but as part of a system grounded in accountability, healing, and public trust.

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[305] *See* Tarko Hudson, *supra* note 296, at 912 ("There are three main purposes for disciplining attorneys: to protect the public, to protect the legal system and to preserve the public confidence in the legal profession.").

[306] *See* Jennifer G. Brown & Liana G.T. Wolf, *The Paradox and Promise of Restorative Attorney Discipline*, 12 NEV. L. J. 253, 253 (2012).

[307] *Id.*

C. Does Mental Health Mitigation Encourage Attorneys to Seek Help?

One of the most significant potential benefits of treating mental health as a mitigating factor in attorney discipline is its capacity to encourage attorneys to seek help before the misconduct occurs. Lawyer assistance programs, including LCL, offer essential resources for attorneys struggling with depression, anxiety, substance use, and other mental health challenges. By explicitly linking treatment to mitigation, disciplinary bodies can incentivize early intervention—ideally deterring misconduct before it harms clients, the public, or the legal system.

This logic is evident in decisions granting mitigation only when the attorney demonstrated a sustained commitment to treatment and recovery. For example, in *In re Lapointe*, the BBO credited the attorney's participation in treatment and cooperation with LCL as evidence that he had taken responsible steps to address the depression and serious medical conditions that contributed to his misconduct.[308] Similarly, in *In re Manning*, the attorney's untreated major depression and generalized anxiety disorder were found to have complicated his legal practice, but his subsequent engagement with LCL and compliance with treatment recommendations helped justify a six-month suspension with a requirement to prove fitness before reinstatement.[309] Such cases send a clear message: attorneys who recognize their impairments and engage in recovery efforts may be eligible for more lenient sanctions, provided they demonstrate stability and insight.

Beyond individual cases, incorporating mental health into disciplinary proceedings also helps to reduce stigma in the legal profession. The SJC has acknowledged the importance of lawyer well-being in promoting ethical and competent practice, explicitly recognizing the connection between personal wellness and professional conduct, and noting the dangers of a disciplinary system that deters attorneys from seeking help out of fear of repercussions.[310] Destigmatizing mental health—by treating treatment as a mitigating factor—may foster a culture of transparency, accountability, and self-care within the

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[308] *See In re* LaPointe, 39 Mass. Att'y Disc R __, 1–2 (2023) (crediting attorney's depression and medical challenges as mitigation and requiring participation in LCL and proof of fitness before reinstatement).

[309] *See In re* Manning, 39 Mass. Att'y Disc R __, 1–2 (2023) (noting attorney's mental health diagnoses and voluntary participation in LCL and treatment as mitigating factors supporting six-month suspension with reinstatement conditions).

[310] *See In re* Zankowski, 164 N.E.3d 898, 910 (Mass. 2021).

profession. If this encourages more attorneys to be open about their own mental health journeys, the ripple effect will continue to be felt.[311]

Yet this goal is undermined when treatment is only credited under narrow or inconsistent conditions. For instance, in *Matter of Knight*, the SJC rejected a claim that the attorney's mental health condition should mitigate the sanction, in part because her misconduct "continued well after she received effective treatment."[312] Although the attorney had sought help, the Court found that her condition was not adequately under control and thus did not justify mitigation.[313] The takeaway from cases like Knight is ambiguous: while treatment is encouraged, it may not be deemed sufficient unless it meets demanding evidentiary thresholds—raising the risk that attorneys will perceive mental health disclosures as professionally risky. It is understandable that mere engagement with any treatment is not enough to find misconduct, but it may not be clear to attorneys what is expected.

Unclear expectations for treatment may create a troubling paradox. If attorneys fear that seeking treatment during a period of distress might later be used against them—or that their progress will not be considered sufficient—they may avoid help altogether. Indeed, disciplinary bodies have occasionally treated contemporaneous treatment as evidence that the attorney was aware of their impairment but failed to control it, rather than crediting the effort to seek help and stabilize. This concern underscores the need for a more nuanced and compassionate framework—one that acknowledges the complexity of mental health recovery and does not inadvertently penalize those who seek help in good faith.

Ultimately, the goal of attorney discipline is not merely to punish wrongdoing, but to protect the public, maintain the integrity of the profession, and support ethical lawyering. Encouraging mental health treatment—through clear, fair, and supportive mitigation standards—advances all three aims. A disciplinary system that rewards early intervention and sustained recovery not only protects clients but also fosters a healthier, more accountable legal profession. The challenge is to ensure that these incentives are transparent, consistent, and rooted in a realistic understanding of mental health treatment.

D. The Role of Mental Health in the Model Rules

In its 2017 report, the National Task Force on Lawyer Well-Being ("Task Force") recommended that the legal profession consider amending the ABA

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311 Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S.C. L. REV. 327, 327–65 (2020) ("Some of the most powerful examples of steps taken to address lawyer wellbeing are not programs or initiatives developed by institutions but stories shared by individuals.").

312 *See In re* Knight, 41 Mass. Att'y Disc. R. __, 10 (2025).

313 *Id.*

Model Rules of Professional Conduct to explicitly recognize lawyer well-being—including mental health—as integral to professional competence as a comment under Rule 1.1.[314] The proposal aimed to encourage a cultural shift: one that would frame self-care, mental health, and psychological resilience not as personal matters separate from lawyering, but as essential components of ethical and competent practice.[315] The Task Force suggested that embedding well-being into the definition of competence could begin to help the profession proactively and systemically confront the widespread mental health crisis.[316]

Supporters of this recommendation argue that incorporating well-being into the Model Rules could lead to more uniform and visible reforms across jurisdictions.[317] Because most states model their rules of professional conduct on the ABA's framework, an amendment to Rule 1.1 would likely influence state bars to treat lawyer well-being as a shared ethical concern, rather than leaving it to ad hoc or informal efforts. Advocates believe this change could signal to attorneys that mental health is not an ancillary concern, but central to protecting clients and the integrity of the profession.[318] In this view, integrating well-being into Rule 1.1 would serve both as a symbolic and practical step toward destigmatizing mental health and encouraging early help-seeking.

Yet, the proposal has generated unease among critics, who fear that the disciplinary system could be weaponized to police well-being. While the Task

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[314] *See* BUCHANAN & COYLE, *supra* note 3, at 15–21.

[315] *Id.*

> The goal of the proposed amendment is not to threaten lawyers with discipline for poor health but to underscore the importance of well-being in client representations. It is intended to remind lawyers that their mental and physical health impacts clients and the administration of justice, to reduce stigma associated with mental health disorders, and to encourage preventive strategies and self-care.

Id.

[316] *Id.* (arguing that incorporating well-being into the definition of professional competence would remind lawyers of the importance of well-being to their practice and would potentially strengthen lawyers' ability to meet ethical standards).

[317] *See* MBD, *supra* note 7.

[318] *See* BUCHANAN & COYLE, *supra* note 3, at 1 ("[T]oo many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence."); Jerome M. Organ et al., *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. LEGAL EDUC. 116, 118 (2016) ("An emphasis on well-being should not be seen as inconsistent with competence, but rather as foundational to it.").

Force clearly stated that its aim was not to punish attorneys for failing to meet vague standards of personal wellness, opponents worry that formalizing well-being as an ethical requirement could invite unintended consequences. Without a clear definition of "well-being," disciplinary bodies might interpret the rule unevenly—or worse, sanction attorneys struggling with mental health conditions despite their efforts to manage those conditions responsibly.[319]

This concern is particularly acute given the profession's history of stigmatizing mental illness.[320] Attorneys openly managing depression, anxiety, PTSD, or other mental health conditions risk being viewed as inherently less competent—regardless of their actual ability to perform. If well-being becomes a formal standard without adequate safeguards, there is a risk that attorneys could be disciplined not for misconduct, but for perceived or actual departures from normative wellness. In such a system, lawyers who are open about their treatment may be penalized, while those who conceal their conditions may be viewed more favorably. This dynamic would only deepen the stigma surrounding help-seeking.

Consider, for instance, an attorney who is actively managing major depression through medication and therapy. Even with responsible self-monitoring and professional support, the attorney may experience

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[319] *See* Daniel G. Esquivel, *supra* note 162, at 123 (arguing that Model Rule 1.16(a)(2) may deter attorneys from seeking help by exposing them to discipline merely for acknowledging a mental health condition, due to the rule's vague standards and lack of definitional guidance); *Id.* at 126–27 (discussing how the reporting obligations under Rule 8.3 exacerbate fear of disciplinary exposure for attorneys with mental health conditions); *see also* MODEL RULES OF PRO. CONDUCT r. 1.16(a)(2) (AM. BAR ASS'N 2023) (warning that, without clearer standards, rules like 1.16(a)(2) could be unevenly enforced and disproportionately harm attorneys with mental illness despite well-managed conditions).

[320] *See generally* Nora Freeman Engstrom & Brianne Holland-Stergar, *Mental Health and Lawyer Licensing: New Report from SLSs Rhode Center Investigates the Practice of Screening Bar Applicants for Mental Health Conditions*, STAN. LEGAL AGGREGATE, https://law.stanford.edu/2024/12/04/mental-health-and-lawyer-licensing-new-report-from-slss-rhode-center-investigates-the-practice-of-screening-bar-applicants-for-mental-health-conditions [https://perma.cc/34UF-LENF] (explaining in regards to character and fitness questions about mental health, "critics have long countered that this inquiry is not only ineffective, it's actively harmful, in that it deters law students from getting the help they need [and] perpetuates stigma"); Wendy Tamis Robbins, *Fighting Stigma: A Lawyer's Mental Health Journey*, MASS. BAR ASS'N E-JOURNAL (Jan. 12, 2023), https://www.massbar.org/publications/ejournal/ejournal-article/ejournal-2023-january-01-12/January-12-fighting-stigma-a-lawyer's-mental-health-journey [perma.cc/J48V-FNLNte] ("One factor that exacerbates the experience of unhelpful anxiety is being afraid to talk about it and feeling alone in the struggle. A powerful tool to fight that stigma is hearing real stories from lawyers who have felt that fear of stigma . . . ."); Disability Rts. Tenn. & the Nashville School of L. Legal Aid Soc'y, *Erasing the Mark: Mental Health Stigma in the Legal Profession*, DISABILITY RTS. TENN. (Oct. 10, 2023), https://www.disabilityrightstn.org/erasing-the-mark-mental-health-stigma-in-the-legal-profession [https://perma.cc/HP2R-XBAA] ("[Mental illness] stigma can play out in a number of ways, including stereotyping, social avoidance, condescension, and discrimination. Looking at that list, is it any wonder why law students, lawyers, and other legal professionals are hesitant to talk about their mental health?").

intermittent symptoms that affect energy, concentration, or interpersonal responsiveness. Under a rule that equates well-being with competence—without clear guidance—such an attorney could be at risk of professional consequences despite having taken all reasonable steps to ensure ethical practice. Further, a "well-being" standard may blur the line between personal health and professional ethics, pressuring lawyers to perform wellness rather than pursue authentic recovery.

More broadly, this proposal surfaces a deeper question: how should the legal profession define competence? The traditional formulation—legal knowledge, skill, thoroughness, and preparation—emphasizes outward performance. But competence is also shaped by internal capacity. Mental health conditions can compromise judgment, attention, and reliability—traits essential to ethical lawyering. At the same time, many lawyers with mental health diagnoses meet or exceed these standards, particularly when properly supported—they may actually have spent more time becoming self-aware and involved with their own well-being than others. The challenge lies in acknowledging the connection between mental health and professional functioning without reinforcing stereotypes or enabling discriminatory enforcement.[321]

The SJC and the BBO have long emphasized that the purpose of discipline is to protect the public, not to punish attorneys for personal difficulties. Competence, in this framework, must be understood as the ability to practice law safely and ethically—not as the absence of illness or struggle. A lawyer experiencing mental health challenges may still be competent if they are self-aware, compliant with treatment, and capable of meeting professional obligations. Conversely, untreated or unacknowledged impairments may present a significant risk. The key is not whether a lawyer has a condition, but whether they can perform their duties with integrity and reliability.

Ultimately, any effort to incorporate mental health into the Model Rules must strike a careful balance. On one hand, the profession must support attorneys in managing their health without shame. On the other hand, it must avoid creating vague standards that allow for punitive or inconsistent

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[321] *See* Long, *supra* note 2, at 66–67, 74–77 (2022) (explaining how the lawyer well-being movement, despite its intentions, has perpetuated stereotypes and failed to integrate the ADA's anti-discrimination framework); Alex B. Long, *Reasonable Accommodation as Professional Responsibility, Reasonable Accommodation as Professionalism*, 47 U.C. DAVIS L. REV. 1753, 1757, 1779–84 (2014) (arguing that failure to accommodate lawyers with disabilities contradicts professional responsibility norms and perpetuates exclusion); Alex B. Long, *Discrimination, Model Rule 8.4(g), and the ABA's Quixotic Quest for Uniformity in Lawyer Regulation*, 81 WASH. & LEE L. REV. 1551, 1560–61 (2024) (noting the tension between the ABA's goals of uniformity and the need for state-level experimentation to address localized discrimination and professional inequality).

application. Rather than redefining competence around ill-defined notions of wellness, disciplinary systems might better serve both attorneys and the public by maintaining a focus on functional capacity—while encouraging early intervention, treatment access, and cultural change through policy and education. In this model, mental health is neither ignored nor over-policed. It is addressed, respectfully and rigorously, as one component of a lawyer's ability to fulfill their professional role.

IX. CONCLUSION

The increasing prevalence of mental health concerns among law students, attorneys, and legal professionals represents both a challenge and a call to transformation. Today's attorneys are entering the profession more open about their struggles and more willing to seek help. Nearly 70% of law students report needing support for mental health issues, and rates of anxiety, depression, and burnout continue to climb.[322] These trends are not marginal and require more than individual adjustments or advocacy. They demand a recalibration of how the legal profession defines, supports, and enforces competence and professional responsibility. If mental health concerns are increasingly part of the professional landscape, then the disciplinary system must evolve to respond—not with suspicion or rigidity, but with clarity and compassion.

The traditional model of attorney discipline—largely reactive, incident-driven, and focused on misconduct after the fact—offers attorneys few off-ramps before sanctions are imposed. Even when alternatives such as diversion or monitoring exist, they are rarely visible and inconsistently applied.[323] Attorneys are generally scrutinized only after misconduct occurs, often at a point when their mental health condition has gone unaddressed or untreated for some time. This may create a dangerous lag between suffering and support. A more proactive disciplinary system could include structured opportunities for confidential consultations, support before misconduct escalates, and transparent mitigation and diversionary pathways that prioritize treatment and stability.

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[322] *See* AM. BAR ASS'N, *Mental Health Awareness Month*, https://www.americanbar.org/groups/diversity/disabilityrights/resources/mental-health-awareness-month [https://perma.cc/3DA9-YGJ9].

[323] *See* Lee, *supra* note 17, at 1270–75 (critiquing the opacity of attorney discipline systems and arguing that secrecy around private sanctions undermines public trust and impedes structural reform); Levin & Fortney, *supra* note 13, at 313.

> It is not easy to study states' use of diversion in lieu of lawyer discipline. Diversion decisions do not appear in written opinions, and diversion agreements are confidential. Although many jurisdictions annually report to the ABA the number of complaints that are referred to diversion programs, the reporting is incomplete and uneven.

Id.

To be clear, protecting the public must remain a paramount goal of attorney discipline. But safeguarding the public is not inconsistent with compassion. In fact, failing to support attorneys in managing treatable mental health conditions may increase the risk of client harm. A disciplinary system that recognizes the complexity of recovery and that supports attorneys in achieving long-term stability can protect both clients and the integrity of the profession. As experts have emphasized, the ethical duty of competence is entwined with an attorney's well-being.[324] Promoting mental health within the profession is not only a moral obligation; it is a structural necessity.

Still, concerns about privacy, stigma, and fairness persist. Much of what occurs in disciplinary processes remains confidential or anonymous, leaving the profession with an incomplete understanding of how mental health is evaluated or considered.[325] While privacy protections are important—especially when sensitive health information is at issue—disciplinary bodies could commit to transparency in standards and accountability in outcomes. Attorneys should not have to guess whether seeking treatment will help or harm them, what treatment is acceptable, how successful treatment can be shown, or whether a relapse or difficult period might jeopardize their professional standing. The profession must make clear that treatment is not a sign of weakness or liability, or a one-time solution—it is a step toward rehabilitation, responsibility, and ethical lawyering.

This requires a shift in how we think about accountability. Too often, accountability is treated as synonymous with punishment. But accountability also means owning one's condition, engaging in recovery, and committing to safeguards that prevent future harm. Mental health mitigation should not be understood as leniency or excuse, but as recognition that recovery and treatment are work and that such work can, in many cases, restore an attorney's capacity to practice safely and competently. The profession must reject the false dichotomy between high standards and human struggle. We can and must demand excellence while also supporting lawyers in the face of mental health realities.

As legal regulators, educators, and practitioners consider how best to support attorneys while protecting the public, several policy reforms might guide the way:

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[324] *See* BUCHANAN & COYLE, *supra* note 3, at 9.

[325] *See* Lee, *supra* note 17, at 1273 (criticizing the lack of transparency in attorney discipline systems, which can obscure how mitigating factors—such as mental health—are evaluated, even if not addressed directly).

- **Establish Clear Guidelines for Evaluating Successful Treatment:** Disciplinary authorities should adopt consistent, evidence-based standards for determining what constitutes successful treatment. Chronic conditions such as depression or anxiety should be recognized as manageable when an attorney demonstrates sustained engagement in treatment, whether through therapy, medication, monitoring, or other appropriate supports. At the same time, it must be emphasized that treatment is not "one size fits all." For some individuals, success may involve continuing medication; for others, it may appropriately mean discontinuing regular medication. These determinations should rest with medical providers, therapists, and the attorney-respondent themselves, not with disciplinary authorities. Accordingly, any guidelines must be developed with meaningful input from medical, psychological, and recovery professionals to avoid overreliance on legal metrics alone.

- **Encourage Early Intervention and Confidential Support:** Regulators should continue to expand access to confidential, non-disciplinary consultations with Lawyer Assistance Programs (LAP), such as Massachusetts's Lawyers Concerned for Lawyers, including their use for diversionary purposes. Early engagement—before misconduct occurs—should be incentivized rather than feared. States might also adopt anonymous data-collection models to improve transparency around patterns of impairment and recovery while still protecting attorney privacy; more detailed anonymized admonitions may serve as a useful model. Sharing the results of such data collection with attorneys can further enhance understanding of how mental health factors into attorney discipline and clarify the available pathways for treatment and diversion.

- **Promote Cultural Competency in Evaluation and Support:** Attorneys from marginalized communities may face disproportionate stigma, barriers to care, or culturally mismatched treatment options.[326] Disciplinary bodies should ensure that mitigation standards reflect an awareness of how race, class, disability, and professional culture shape attorneys' experiences

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[326] Dena Robinson & Kimya Forouzan, *For Lawyers of Color, Collective Liberation Looks Like Mental Health Care*, IF/WHEN/HOW (Nov. 25, 2019), https://ifwhenhow.org/news/for-lawyers-of-color-collective-liberation-looks-like-mental-health-care [https://perma.cc/RM4U-YLQ3] ("[P]eople of color often face greater barriers in accessing mental health resources. For example, a recent study found that the test widely used to screen people for depression is much more effective in determining the mental health status of white people than of people of color."); *see also* SIRKEN ET AL., NORC AT THE UNIV. OF CHI., LAWYER WELL-BEING IN MASSACHUSETTS: FINAL REPORT vi (Feb. 1, 2023) (showing greater need among lawyers from marginalized groups) ("Lawyers from some groups that have been marginalized reported higher burnout, anxiety, and depression and lower satisfaction with life. This includes lawyers who identify as female; Black/African American; Hispanic/ Latino/a/e; having a disability; or non-heterosexual.").

with mental health—and how those experiences affect the expression of remorse, insight, or rehabilitation.[327]

- **Standardize Conditions for Monitoring and Reinstatement:** When ongoing treatment or monitoring is imposed as a condition of reinstatement, disciplinary authorities should establish clear, transparent, and proportional expectations. These might include participation in LAP, regular therapy, periodic reports, or follow-up assessments. Standards must be designed to support—not burden—attorneys in long-term recovery and should be reviewed periodically with medical and therapeutic professionals.

- **Integrate Well-Being into Professional Development, Not Discipline:** In addition to embedding well-being directly into the Model Rules as a standalone disciplinary mandate, the profession should promote it through continuing legal education, mentorship, and bar programming. This allows the profession to elevate wellness without creating vague new grounds for sanction. Initiatives like Massachusetts's Supreme Judicial Court Standing Committee on Lawyer Well-Being offer a promising path forward—bringing together law students, professors, and lawyers to discuss creative solutions to these challenging issues, and anchoring reform in the community.[328] Further, considering the role of firm or organizational culture in encouraging poor practices (overwork, unrealistic billing expectations, bias, excessive alcohol use) might shift some of the burden away from individual attorneys and towards cultural change.

Taken together, these reforms do not lower the bar of professional responsibility. They raise it by expecting attorneys not only to meet ethical standards but to proactively seek the support they need to do so sustainably. A disciplinary system that encourages treatment, reduces stigma, and acknowledges the complexity of recovery does not weaken public protection. It strengthens it.

Ultimately, the goal of attorney discipline is not to punish; it is to help guide attorney behaviors, preserve the profession's integrity, and ensure that the public is served by competent, ethical, and whole practitioners. Thoughtfully incorporating mental health into this process is not a deviation from that mission—it is essential to its success. With clearer standards, transparent practices, and a commitment to compassion, the legal profession can chart a path toward a more accountable, equitable, and humane system—

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[327] This Author is currently working on an article about expressions and expectations of remorse in attorney discipline.

[328] *See* MASS. SUP. JUD. CT., *Supreme Judicial Court Standing Committee on Lawyer Well-Being*, COMMONWEALTH OF MASS. (Sept. 11, 2025), https://www.mass.gov/info-details/supreme-judicial-court-standing-committee-on-lawyer-well-being [https://perma.cc/56M9-EC54].

one in which attorneys are neither excused by their suffering nor punished for seeking help, but supported in doing the work that ethical practice demands and the legal profession deserves.