

Guidelines for Applicants declaring health conditions

Introduction

These guidelines have been drafted to assist applicants for a certificate of character as to what it is expected should be declared in their Certificate of Character application form in response to the question

Do you currently have a mental or physical health condition that may affect your ability to perform the functions required for the practice of the law, or have you ever had a condition of that kind that may recur?

This is a relevant consideration for the Law Society or the High Court to take into account when considering whether an applicant is a fit and proper person to be admitted as a barrister and solicitor of the High Court, under s55(1)(l) of the Lawyers and Conveyancers Act 2006 (the Act).

The Law Society understands that applicants may be concerned that if they declare an existing or historic mental or other health issue, it will affect their chances of being issued with a certificate of character and that disclosing information of a private and personal nature can be difficult.

Disclosing such matters will not necessarily result in your application being declined, and it is expected under the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 that all lawyers (and candidates for admission) are open and honest with their regulatory body. This is essential to enable regulation of the profession in a way that protects both consumers of legal services and the wellbeing of practitioners.

Applicants can also be assured that the process is a confidential one. Any declaration or concerns raised will be dealt with confidentially. Any disclosure will be limited to those who are required to know for the purposes of progressing an application.

What do you need to declare?

You are required to declare mental or physical health conditions that *may* affect your ability to perform the functions required for the practice of the law.

Some of the functions required for the practice of law include:

- making careful judgments sometimes in time critical and stressful situations;
- adhering to lawyers' fundamental ethical obligations to clients and the courts;
- demonstrating the level of skill and knowledge required for competent practice;
- dealing with competing priorities;
- behaving appropriately; and

- not acting in ways that impact adversely on clients, other members of the legal profession, or members of the public.

Please note the following guidance:

- In general, it is unlikely that a physical condition would render you unable to perform the functions required for the practice of law.
- Minor mental health matters and one-off episodes of illness need not be declared, nor mild anxiety during exam time.
- A one-off episode of depression which was mild and related to a specific matter such as, for example, end of a close relationship or a bereavement, does not need to be declared.
- It is expected that you would declare a persistent or recurrent condition.

Relevant considerations

Practising law is one of the most stressful professions. Lawyers have a higher rate of psychological illnesses such as depression and anxiety than other professions according to international research. As the regulatory body for the profession, the Law Society wishes to ensure practitioners have awareness of possible stressors and adequate support systems and the resilience to manage stress.

Resilience is an important part of a lawyer's tool bag for successful practice. Resilience is the ability to adapt continually to stress and adversity by facing difficult experiences and rising above them with relative ease. It is something that can be developed, and all lawyers need strategies to stay well and resilient.

When assessing whether a condition may affect a person's ability to perform the functions required for the practice of the law, the Law Society will take into account the following relevant considerations:

- how the applicant manages his or her health condition;
- how, and the extent to which, that health condition may affect the applicant's ability to perform adequately the functions required to practise law without risk to the consumers of legal services, or to the reputation of the profession, or to the applicant's wellbeing;
- whether the applicant has shown insight and understanding into the condition and how it may affect his or her ability to practise law;
- whether the applicant has medical, psychological, or other support;
- whether the applicant has informed his or her employer about the condition (see below); and
- whether the applicant has made (or agreed with their employer) reasonable adjustments to his or her work arrangements in light of the condition.

The test is an objective one. An applicant is not responsible for determining definitively what may be relevant. In order to fully assess an applicant's particular circumstances as much information as possible is needed. The details which should be provided by an applicant includes the following information:

- nature of the condition, and whether it is short term or ongoing
- frequency and duration of episodes and when it could impact on your ability to practise
- general details of treatment received (particularly if this is ongoing)
- details of how the applicant manages the condition and what support systems he/she has in place
- (if applicable) progress made toward recovery, and expected long term outlook
- a medical certificate and/or report from your health professional (e.g. GP, Psychologist, Psychiatrist) that includes information about any medication you may be prescribed, and counselling undertaken, and that comments on your fitness to practise law.

Applicants should consider informing their employers and referees about a mental health condition. While this will not be insisted upon, being open and candid may assist an application. A reference that demonstrates the referee is fully aware of any personal difficulties or concerns facing an applicant is likely to be a stronger reference than one in which the referee has limited personal knowledge of the applicant.

In addition, if your employer is aware of a condition, they can be a helpful support and address any potential work stressors before they develop.

Opening up to referees and employers, can also help reduce any stigma associated with mental health issues. Openness and forthright disclosure of potential issues is beneficial in assessing resilience and "fit and proper" issues.

Interview

The Law Society may wish to conduct an interview with you. You are welcome to bring a support person to the interview. Interviewers will be looking for evidence that you have insight into your condition, awareness of possible triggers, and support mechanisms in place to manage any illness so that it doesn't affect work or the ability to cope with stress.

The other purpose of the interview is to offer support and information about the "Practising Well" services offered by NZLS and to discuss matters such as planning for resilience in practice. Knowing that the legal profession is a collegial one and that mental health issues do not have a stigma attached to them can be beneficial when starting a legal career.

Further Resources

Information on "Practising Well" can be found here; <https://www.lawsociety.org.nz/practice-resources/practising-well>