



THE UNIVERSITY OF
MELBOURNE

Paradoxes of Practitioner Health

Prof Marie Bismark

**MBChB LLB MBHL MPH MPpsych MD
FAICD FAFPHM FRANZCP**

October 2023





About me

Teacher: Professor of Law and Public Health University of Melbourne; teach “Patient Protection” at Melbourne Law School

Researcher: NHMRC Investigator Grant, 100+ publications on complaint resolution and practitioner wellbeing eg MJA, NEJM, BMJ

Lawyer: 8 years as a legal advisor with complaints commission and health practitioner regulation agencies

Clinician: Consultant psychiatrist, Te Whatu Ora Health New Zealand; Role includes treating unwell lawyers and other professionals

Leader: Fellow of the Australian Institute of Company Directors, Director of The Royal Women’s, Summerset aged care



The impaired lawyer

- The health of lawyers affects individual practitioners, their clients, their colleagues, and wider trust in the profession
- Disciplinary cases often involve lawyers who are impaired by medical conditions, or substance misuse. Their impairment either contributed to, or was responsible for, their misconduct.
- If we can understand **why** practitioners lose the ability to practice safely and well, we may be able to prevent harm occurring

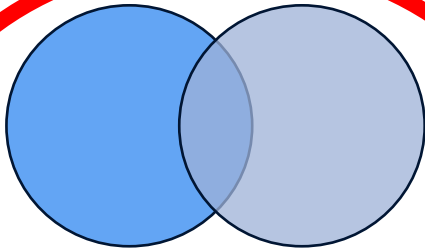


Hold two opposed ideas in mind

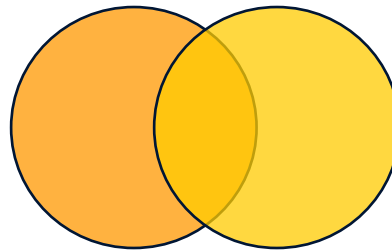
The test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function.

-F. Scott Fitzgerald

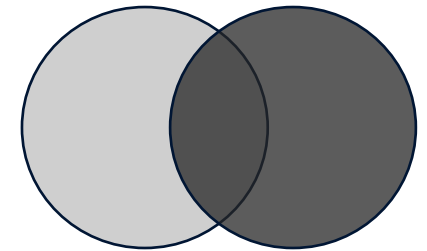
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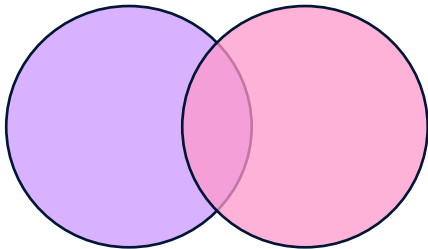
Smiling & Struggling



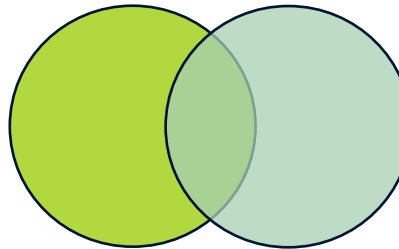
Surrounded & Alone



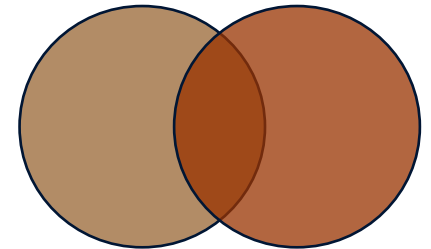
Powerful & Vulnerable



Random & Predictable



Unwell & Accountable



Kind & Strong



A profession of smiles and success?

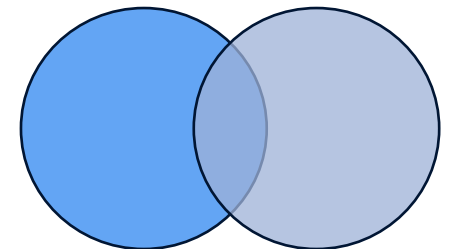


FINANCIAL REVIEW

Freehills promotes 'young and hungry' to partner



Herbert Smith Freehills CEO Justin D'Agostino with new partners, from left, Aoife Xuereb, Jason Jordan, Niresha Mudalige and Alex Mackinnon. **Louis Treise**



Smiling & Struggling⁶

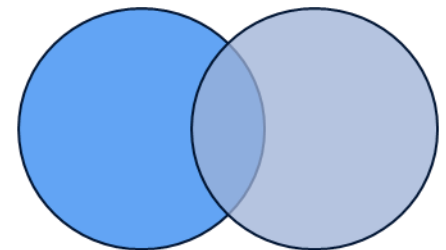


Behind the smiles and success

- 37% of lawyers displayed moderate to severe depressive symptoms
- 35% of lawyers screened positively for hazardous or harmful drinking
 - Australian Lawyer Well-being, 2014
- Suicide is a leading cause of premature death among lawyers



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Smiling & Struggling

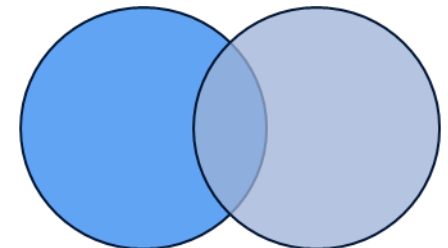
The Janus-faced triad

Perfectionism



Individualism

Dedication



Smiling & Struggling⁸

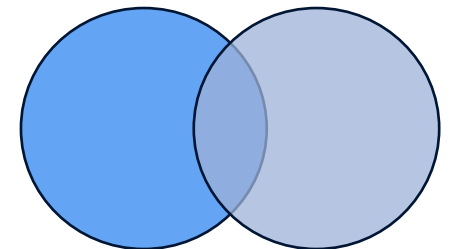


Horizontal, vertical, and internal pressures to succeed

“Respondents frequently revealed an experience of **acculturation** into the legal profession which involved learning that:

- the trait of perfectionism was fostered
- overworking is the norm
- they should not prioritise their personal wellbeing
- failure to cope with pressures was a result of personal weakness.”
- Victorian Legal Services Board and Commissioner

Lawyer Wellbeing Project, 2019



Smiling & Struggling⁹



The death of a leading lawyer

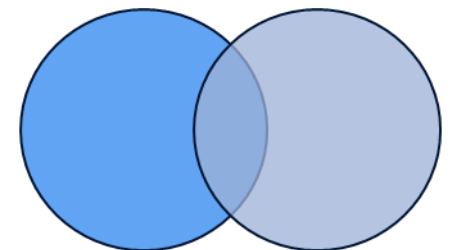
Perfectionism: "one of this country's finest legal brains". (politician)

Individualism: "too proud to discuss his depression with anyone" (wife)

Dedication: "the relentless pressures of his practice, crowded out the time needed to look after his own health " (Coroner)

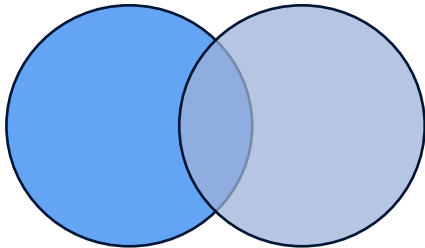
Outside: "He had all the attributes that any criminal barrister would want."
(President of the Bar Association)

Inside: "exhausted, unwell, burnt out, disillusioned, depressed, and haunted".
(suicide note)

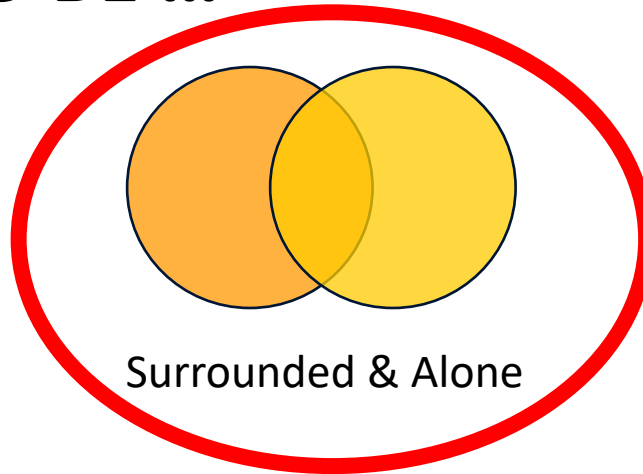


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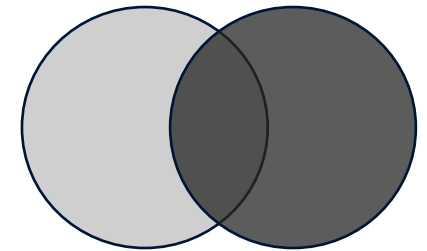
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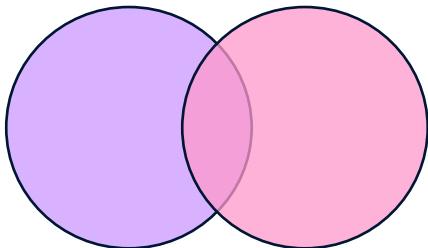
Smiling & Struggling



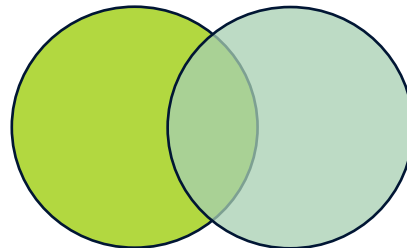
Surrounded & Alone



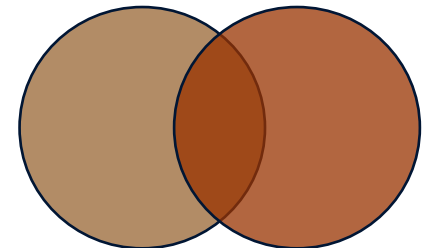
Powerful & Vulnerable



Random & Predictable



Unwell & Accountable



Kind & Strong



The loneliness behind the “professional mask”

- Lawyers interact with others at a professional distance and according to professionally-defined roles
- This can offer a sense of confidence and control
- But it can also lead to lawyers feeling alone, even as they are surrounded by clients and colleagues

Article

Stressed, Lonely, and Overcommitted: Predictors of Lawyer Suicide Risk

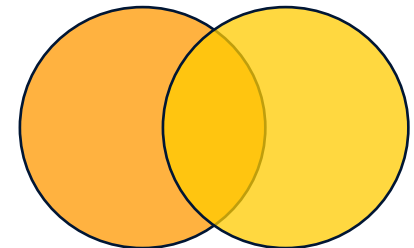
Patrick R. Krill ¹, Hannah M. Thomas ², Meaghyn R. Kramer ², Nikki Degeneffe ² and Justin J. Anker ^{2,*}

¹ Krill Strategies, LLC, Minneapolis, MN 55408, USA

² Department of Psychiatry, University of Minnesota, Minneapolis, MN 55454, USA

* Correspondence: anke0022@umn.edu

Abstract: Suicide is a significant public health concern, and lawyers have been shown to have an elevated risk for contemplating it. In this study, we sought to identify predictors of suicidal ideation in a sample consisting of 1962 randomly selected lawyers. Using logistic regression analysis, we found that high levels of work overcommitment, high levels of perceived stress, loneliness as measured by the UCLA loneliness scale, and being male were all significantly associated with an increased risk of suicidal ideation. These results suggest that interventions aimed at reducing work overcommitment, stress, and loneliness, and addressing gender-specific risk factors, may be effective in reducing the risk of suicidal ideation among lawyers. Further research is needed to expand upon these findings and to develop and test interventions specifically tailored to the needs of this population.



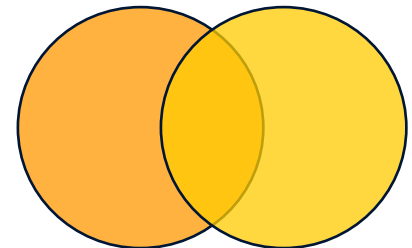
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Lack of supports

“One lawyer recalled that on their first day with a law firm they were “handed a file for an incest case and basically told to get down to court i.e. thrown in the deep end. There was no care taken in terms of possible vicarious trauma.”

- Victorian Legal Services Board and Commissioner
Lawyer Wellbeing Project, 2019



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resilience

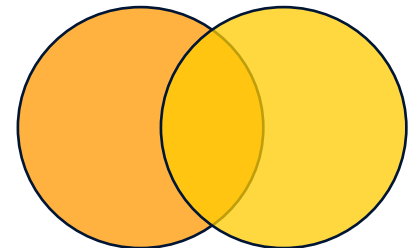
/rɪˈzɪliəns/

noun

1. The capacity to withstand or to recover quickly from difficulties
2. The ability of an object to spring back into shape

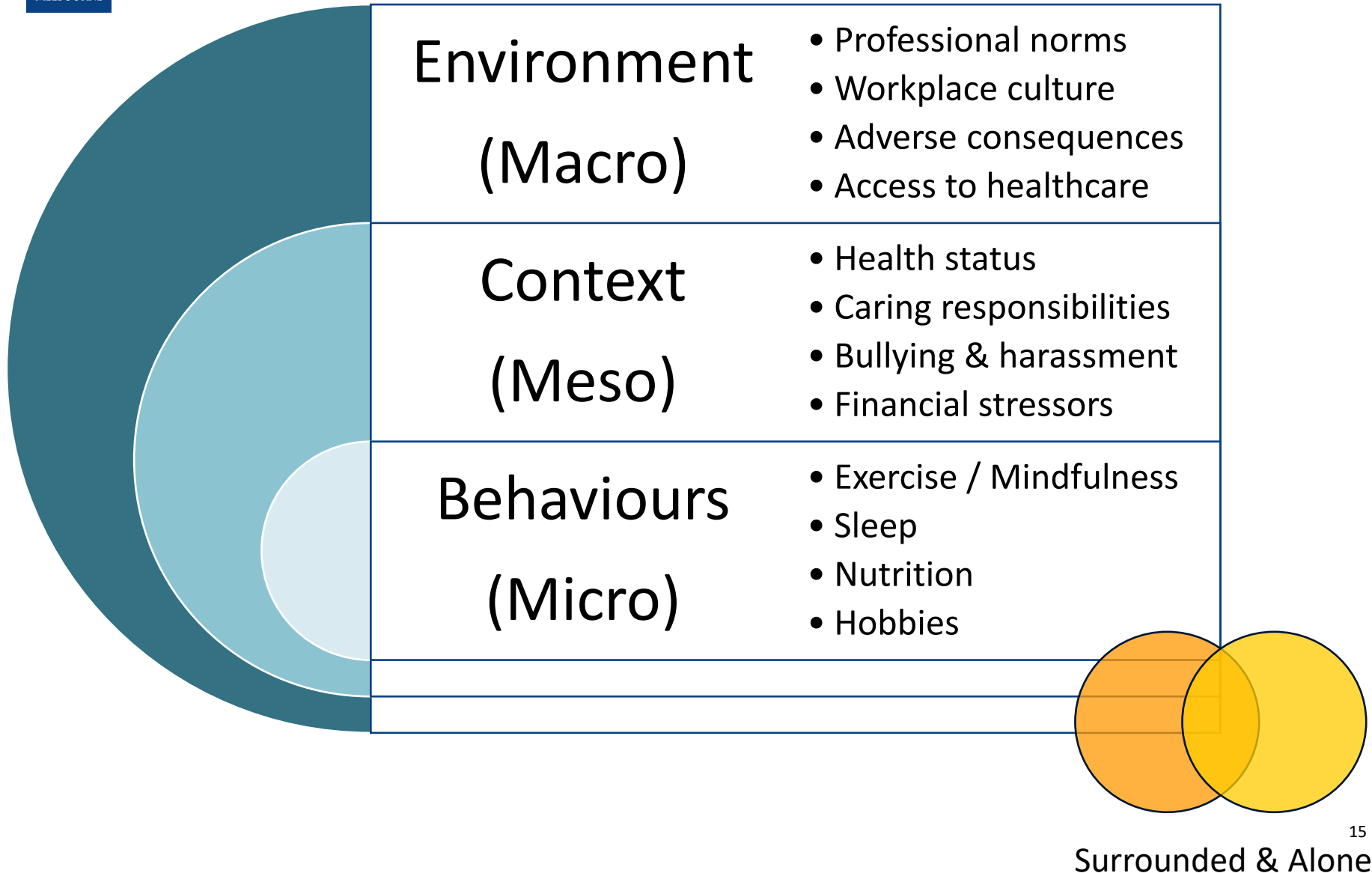
“Even the best ball can’t bounce in a swamp.”

– Dr Louise Stone



Surrounded & Alone

Limits of self-care



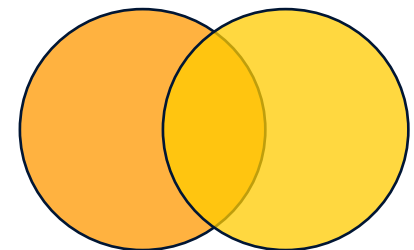


The antidote to burnout is connection

Autonomy: Connection to values and voice

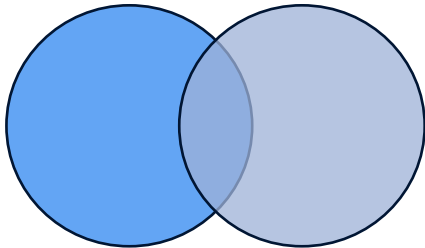
Belonging: Connection to people and place

Competence: Connection to purpose and growth

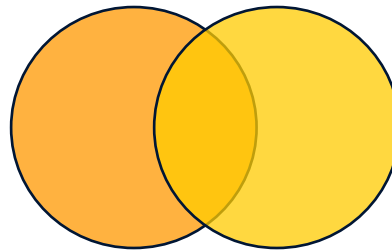


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IT IS POSSIBLE TO BE ...



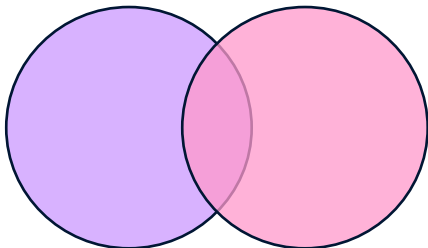
Smiling & Struggling



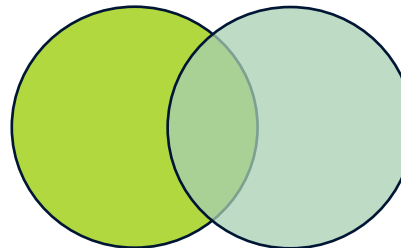
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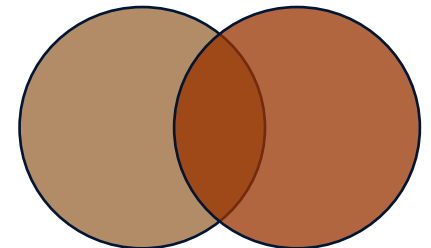
Powerful & Vulnerable



Random & Predictable



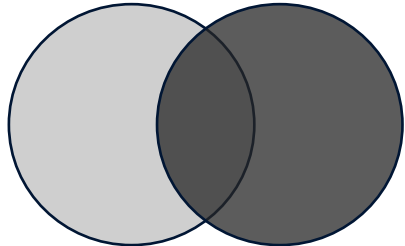
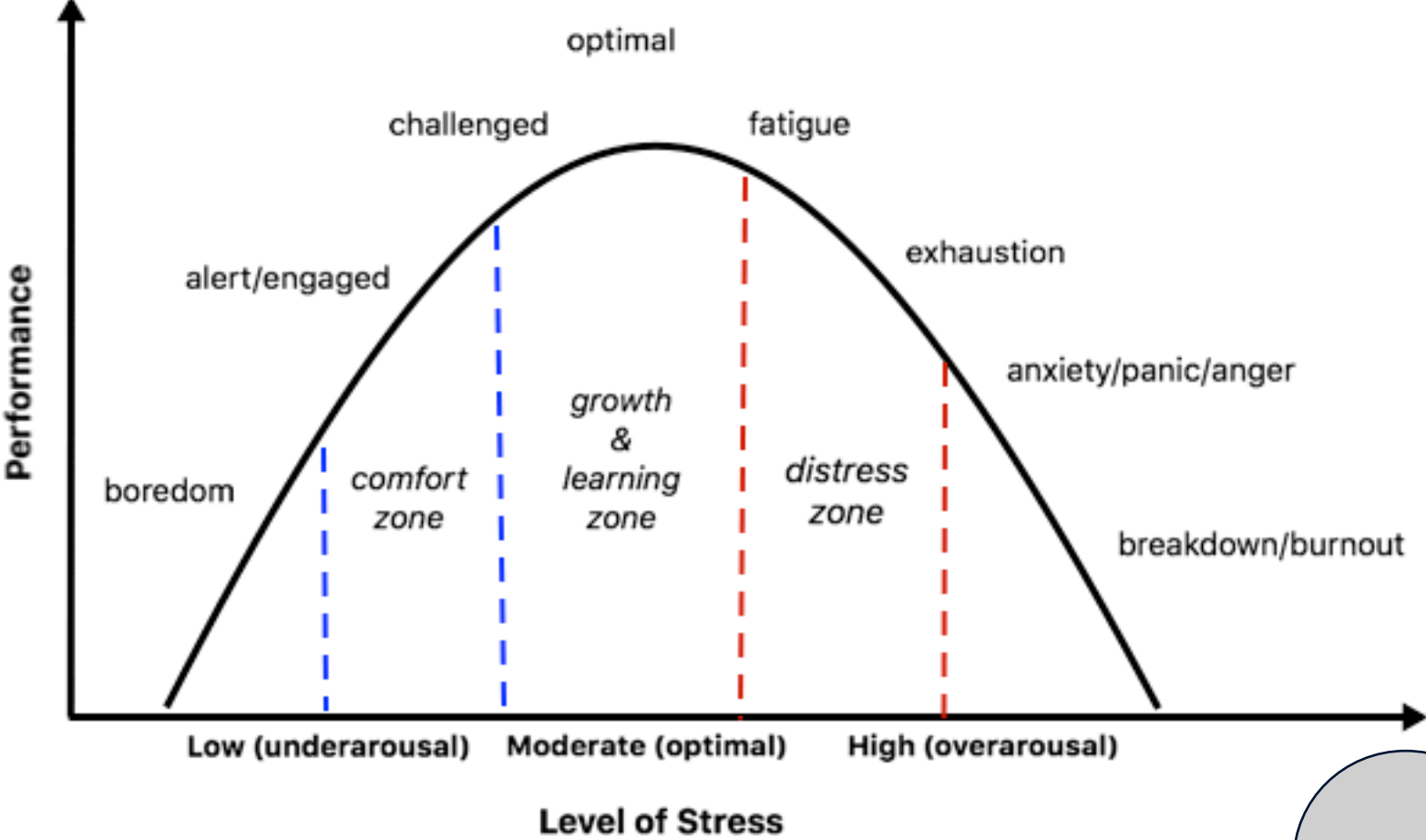
Unwell & Accountable



Kind & Strong



Yerkes-Dodson Curve

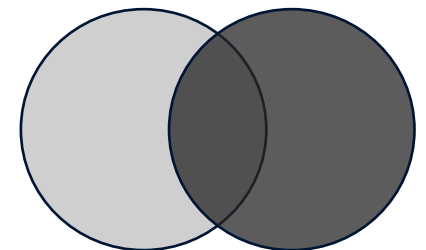


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An assault on their integrity?

Doing their best and practising to high standards is ingrained in professionals. So those who have a complaint against them often perceive it as an assault on their own integrity.

- Practitioners may harbour visions of disastrous personal consequences – loss of reputation or registration
- Some will withdraw into a shell and stop communicating with regulators which can make the situation worse
- Fear of the unknown causes further stress which can contribute to physical or mental illness



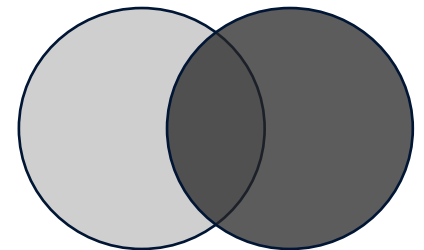


Health effects of regulatory processes

“Every time I see my lawyer's name pop up in my inbox, every time I get a call from the lawyer, every time I even open my emails, before I even see what's in it, I get palpitations ... I cry a lot more easily than I did before.” (P10).

“I was always good at sport, and I was a good-looking guy ... I was successful. And after this, I was a big fat de-registered loser. I was overweight and had lost all my confidence and wasn't competent to do anything else.” (P4).

- PhD thesis by Dr Owen Bradfield



Powerful & Vulnerable²⁰

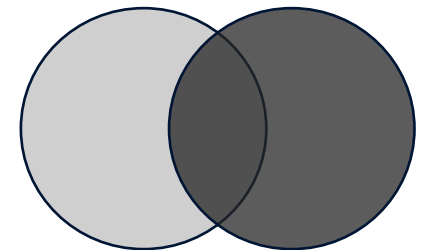
16 OCTOBER 2023

AHPRA NOTIFICATIONS A 'DAILY GRIEF'



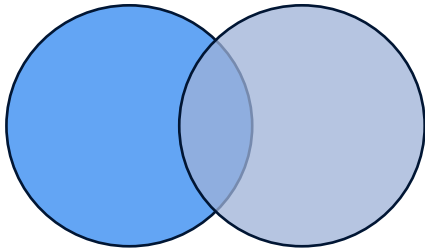
By
HOLLY PAYNE

In four years 16 health practitioners died during or directly after an AHPRA investigation. Now, the regulator is trying to change.

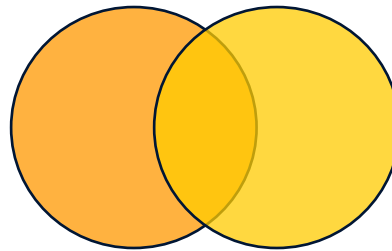


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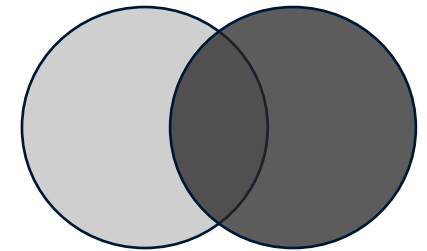
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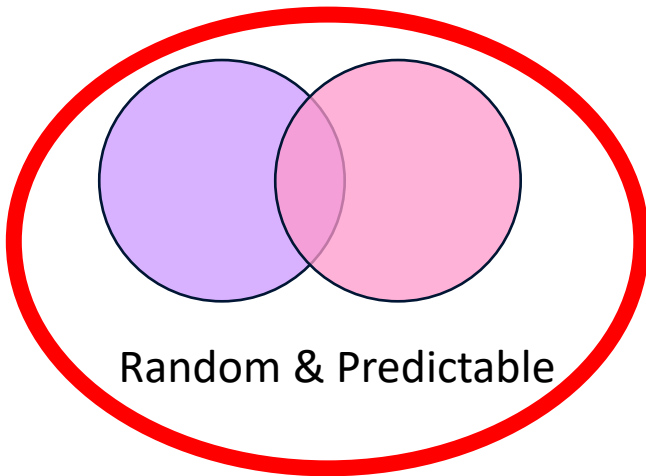
Smiling & Struggling



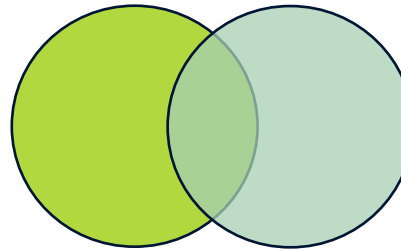
Surrounded & Alone



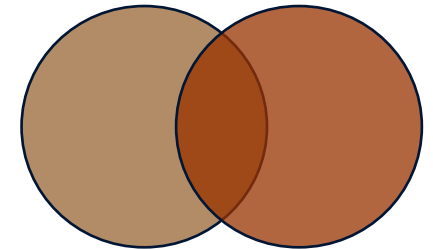
Powerful & Vulnerable



Random & Predictable



Unwell & Accountable

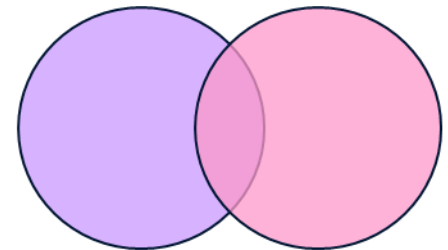


Kind & Strong

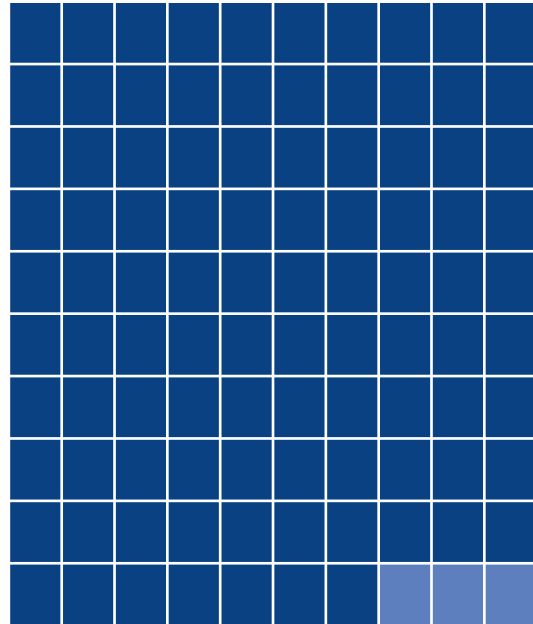


“... it doesn't rain on everybody equally ...
some [practitioners] have a malpractice dark cloud.”

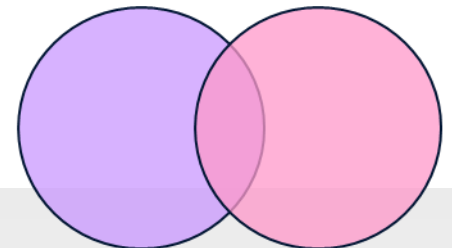
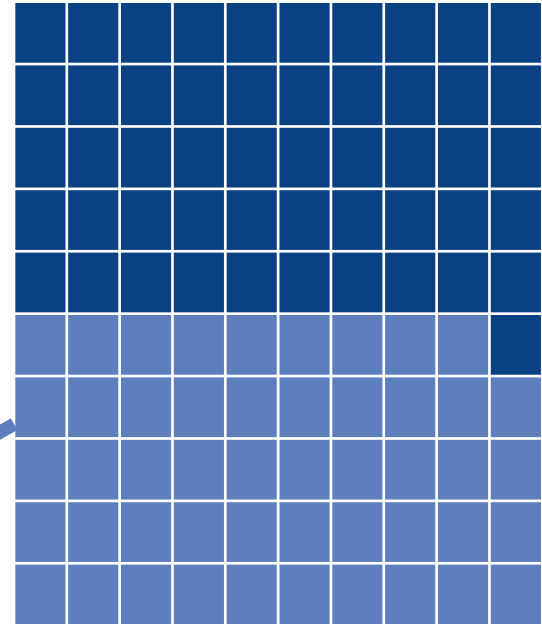
-Gerald B Hickson MD



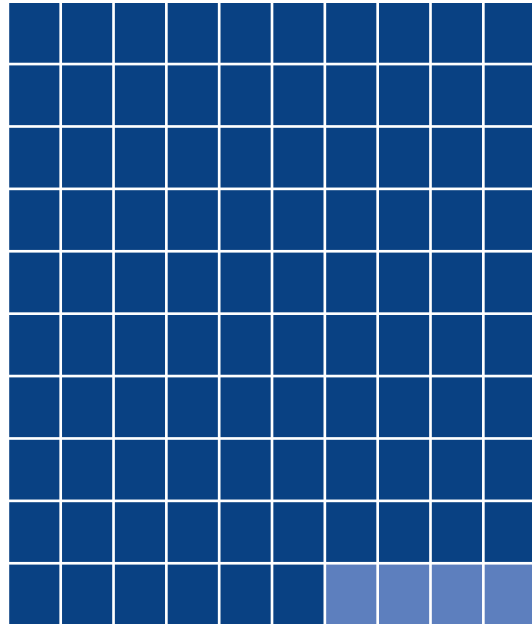
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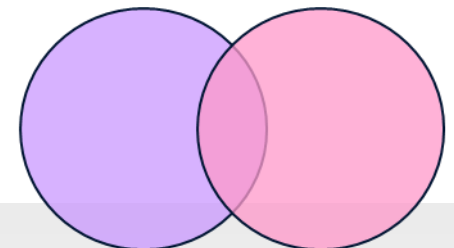
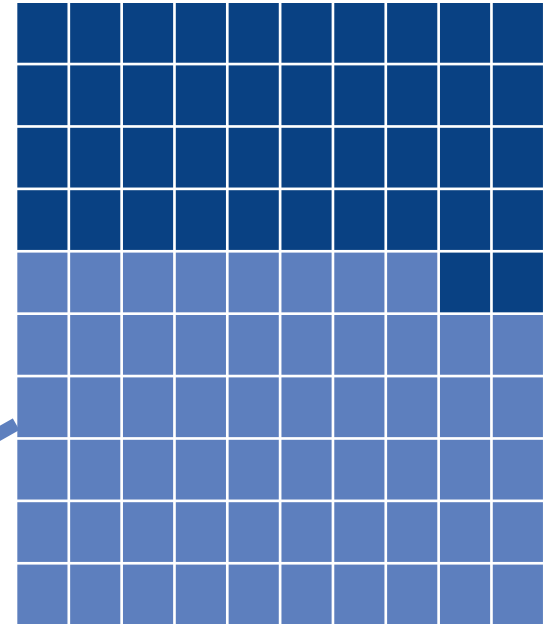
3%
of doctors
account for
49%
of complaints
about doctors



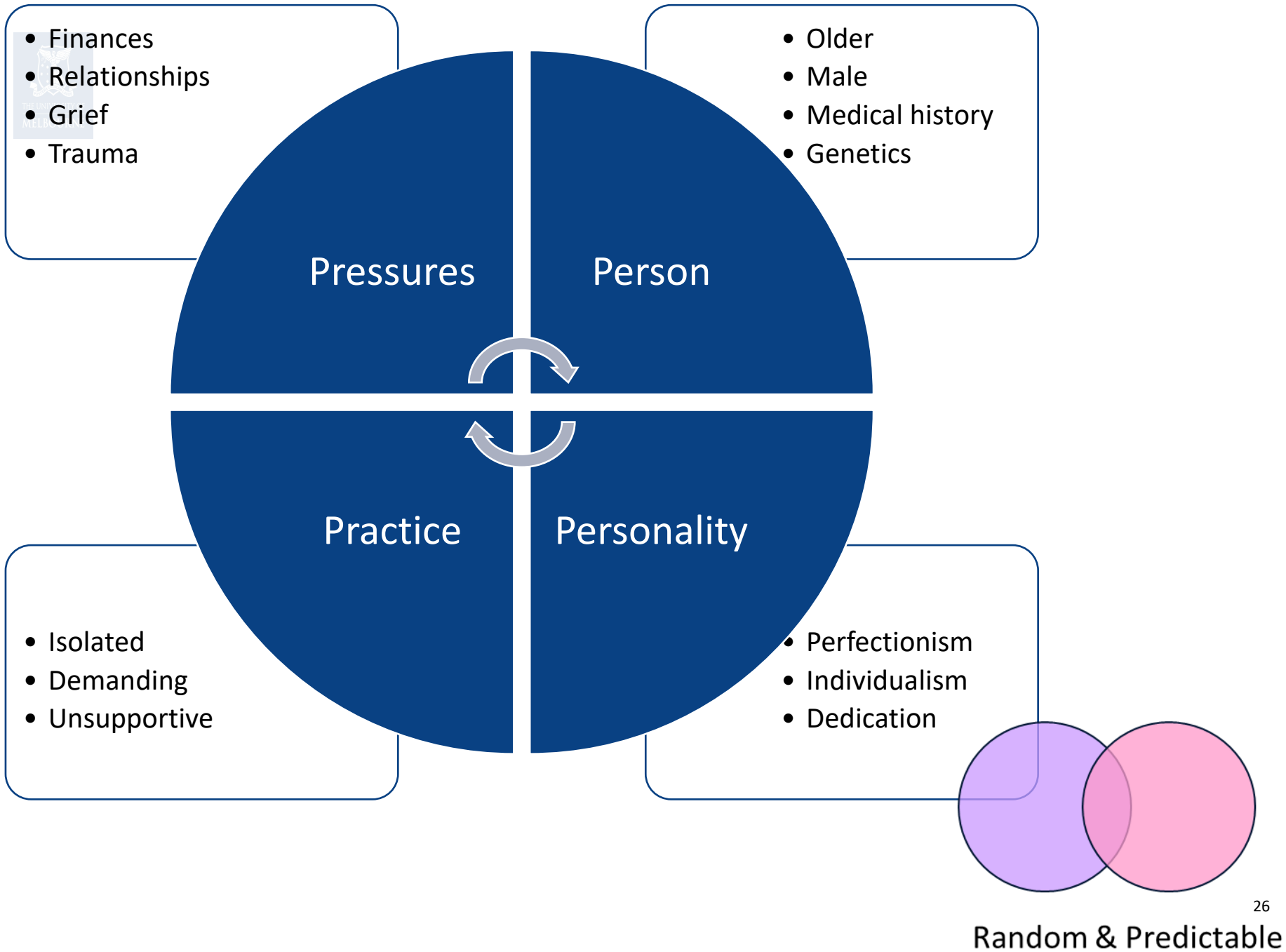
Random & Predictable



4%
of lawyers
account for
58%
of complaints
about lawyers



Random & Predictable





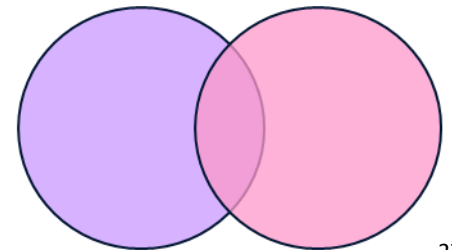
A missed opportunity

“Regulators are charged with upholding professional standards of practice and protecting consumers. Their approach tends to be reactive and focused on the resolution of individual complaints.

This is a missed opportunity.

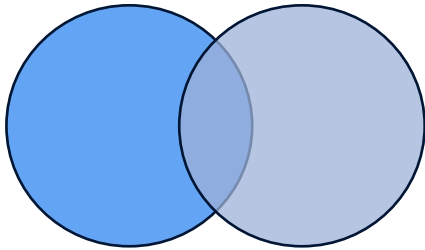
Regulatory agencies amass valuable data on patterns of concern about large populations of practitioners that, if analysed carefully, could yield insights to help guide and improve regulatory oversight.”

- Sklar et al

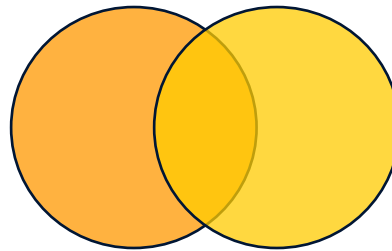


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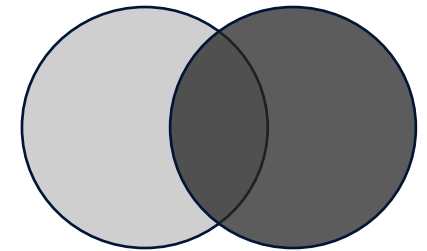
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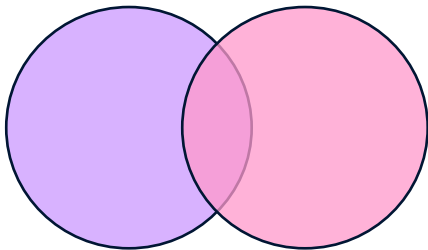
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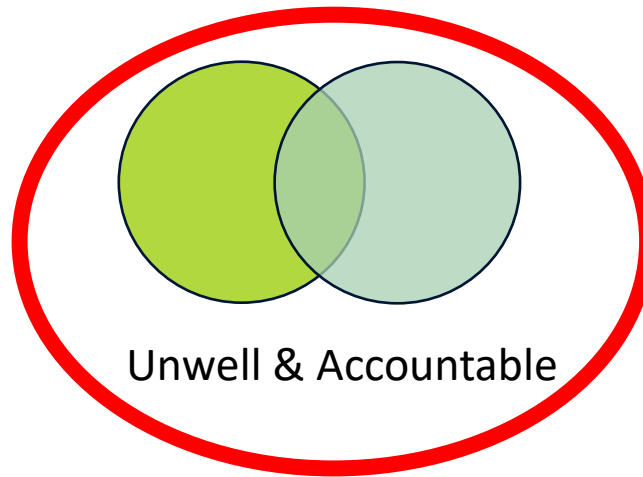
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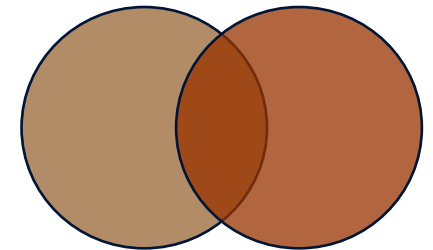
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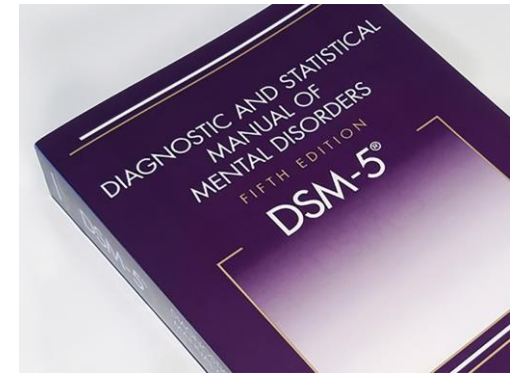
Unwell & Accountable



Kind & Strong



Understanding why

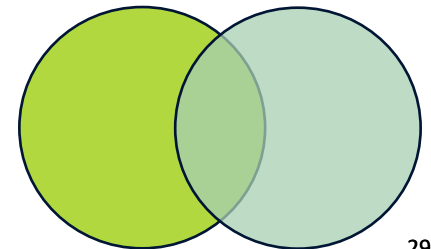


Major depressive disorder: Diminished ability to think or concentrate, indecisiveness; loss of energy, reduced interest

Manic episode: Grandiosity, distractability; risky activities

Substance use: Recurrent use, with unsuccessful efforts to cut down, resulting in failure to fulfil major obligations

Dementia: Major decline in previous level of cognitive performance e.g. decline in complex attention, learning and memory, language, social cognition





A reason or an excuse?

- Dr Lee, a doctor working in the Hobart Emergency Department, made racist, sexist and derogatory remarks online, called for women to be raped, and posted photos of patients
- Dr Lee argued that his previously untreated autism spectrum disorder had played a role in his conduct.

7NEWS

Former Tasmanian medical practitioner suspended for calling

The Tasmanian Health Practitioners Tribunal last week found Dr Christopher Kwan Chen Lee, 31, guilty of professional misconduct.

The Medical Board of Australia has alleged that Dr Lee made "inappropriate comments" in Singaporean chat rooms while working and residing in Hobart in December 2016.

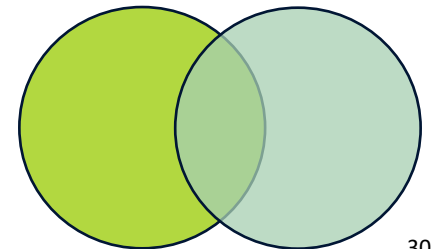
During the tribunal hearings, Chairman Robert Webster listed some of the derogatory comments made by Dr Lee.

"Some women deserve to be raped, and that supercilious little bitch fits the bill in every way," one of the comments said.

"She needs to be abandoned in India and repeatedly raped in order for her to wake up her idea.

Key points:

- Dr Christopher Kwan Chen Lee was found guilty of professional misconduct
- He said on social media "some women deserve to be raped"
- Dr Lee said he was "relatively young and inexperienced" when he made the comments



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Unwell & Accountable

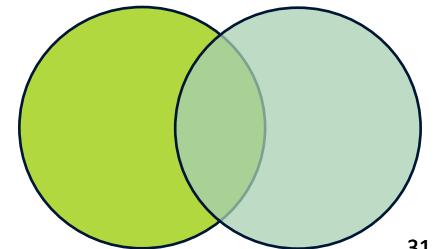


A reason or an excuse?

NEWS

Suspended Attorney's Wife: 'This Case Should Alert Others' Who Suffer From Mental Health Disorders 'To Seek Treatment Prior to Things Escalating Beyond Their Control'

The Ohio Supreme Court suspended a private practice attorney's license for two years after he was convicted of an armed confrontation with a rental property tenant, during what physicians believed was a severe manic episode, according to the court's per curiam judgment on Thursday.



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A reason or an excuse?

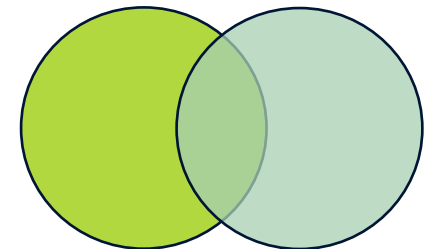
A reason:

- Helps to explain *why* something may have happened
- Accepts that illness can cause certain limitations
- Shows self-awareness and takes responsibility*

An excuse:

- Resists self-awareness or understanding
- Seeks to evade responsibility
- Does not take pre-emptive steps to prevent harm or manage consequences

*Note: insight may be impaired in dementia, head injury, or psychosis

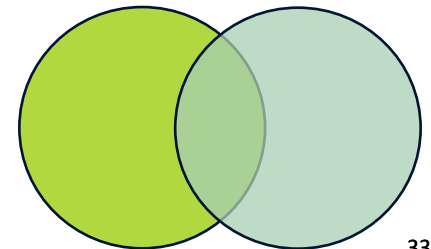




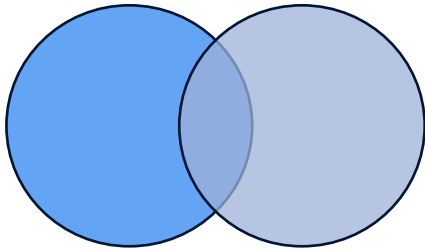
Regulatory intervention can provide life-saving accountability

“I’m in a better place now because of the drug testing. I needed a little bit of a carrot and stick when I was first coming out of addiction because I wasn’t making good decisions ... I have friends who are still using. I am lucky because the monitoring keeps me abstinent.”

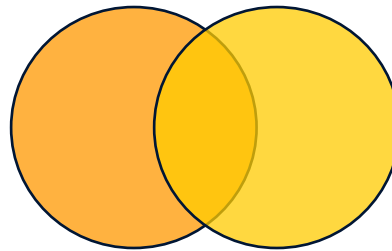
- Doctor subject to conditions on practice



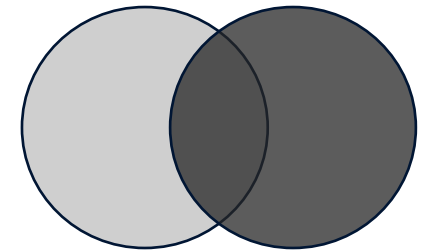
IT IS POSSIBLE TO BE ...



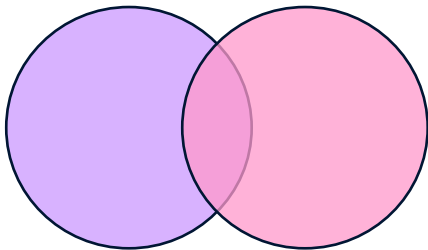
Smiling & Struggling



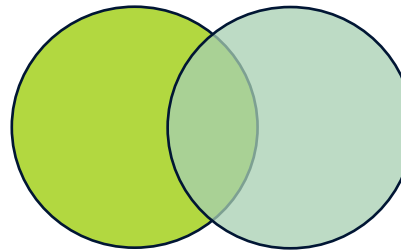
Surrounded & Alone



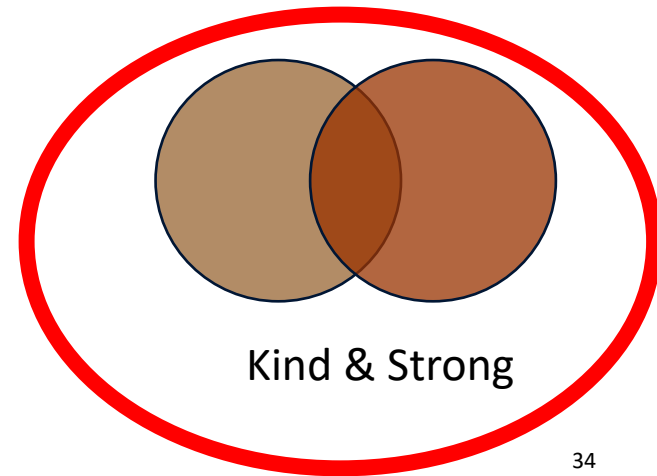
Powerful & Vulnerable



Random & Predictable



Unwell & Accountable

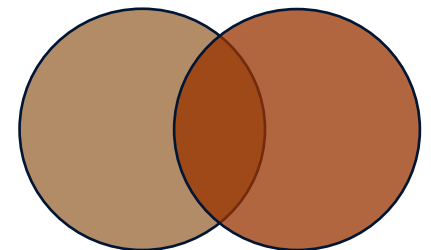


Kind & Strong



Regulatory processes can feel adversarial and threatening

“The [regulatory agency] is full of ex-policeman and ex-detectives. They need people with compassion, or get some doctors or psychologists in there, who have a bit more of an understanding of mental health.” (P17)



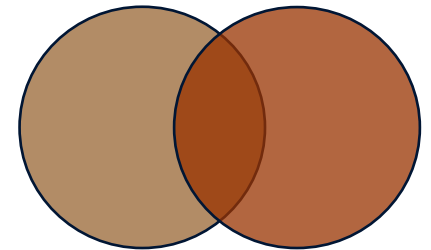
Kind & Strong



Therapeutic jurisprudence

“**Therapeutic jurisprudence** recognises the importance of trust, procedural fairness, emotional intelligence, and relational interaction which can provide a constructive alternative to the flawed adversarial paradigm which presently dominates the justice system.”

- Arie Freiberg



Kind & Strong



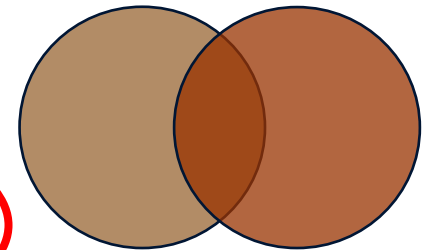
Review: “Regulating lawyers in Aotearoa New Zealand”

“Outside of the disciplinary framework, the Law Society has limited ability to respond in a timely way when issues such as cognitive impairment are raised ...

A modern regulatory framework requires that the regulator has the tools to be able to regulate effectively in the public interest.”

Recommended new tools for the regulator

1. The power to suspend a practising certificate (which is currently only a power of the LCDT) in cases where, pending the outcome of disciplinary process, the lawyer may pose a risk of serious harm to the public or to public confidence in the legal profession.
2. The power to require lawyers to take action without the need for a disciplinary or fault-based finding, in cases where concerns about an individual’s fitness to practise arise:
 - a) requiring a lawyer to undergo a health or competence review and comply with remedial measures (eg, rehabilitation, supervision, further training) in cases where concerns about a lawyer’s fitness to practice arise (eg, if there are reasonable grounds for believing that a lawyer has a drug or alcohol problem, inadequate supervision, or exhibits a pattern of concerning behaviour)

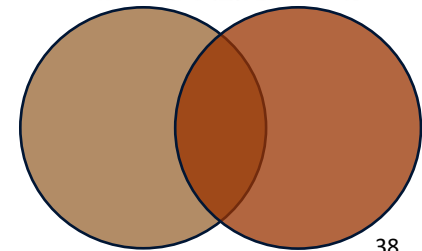


Kind & Strong

Positive direction of change

General principles

- 5.2 In considering requiring a medical examination, the Board will have regard to the need to:
- properly protect consumers while supporting lawyers with mental health conditions to practise, or to continue to practise, where possible;
 - treat mental health conditions as a health issue rather than a professional standards issue;
 - encourage lawyers to voluntarily seek appropriate health care;
 - treat lawyers with mental health conditions fairly and sensitively;
 - protect the privacy of lawyers with mental health conditions as far as possible while properly protecting consumers.





Finding space for kindness

“Kindness is not about sugar-coating or wilfully ignoring risks to protect practitioners ...

Kindness in regulation is about developing humane approaches that maintain a strong focus on risk and patient safety while considering practitioner well-being.”

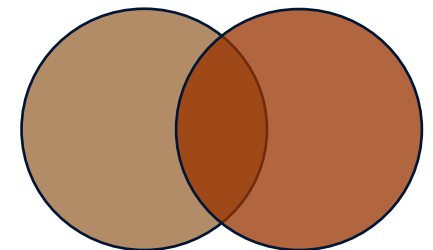
- Biggar et al

JOURNAL ARTICLE

Finding space for kindness: public protection and health professional regulation

Susan Biggar , Martin Fletcher, Anna Van Der Gaag, Zubin Austin

International Journal for Quality in Health Care, Volume 34, Issue 3,



Kind & Strong



The death of a leading lawyer

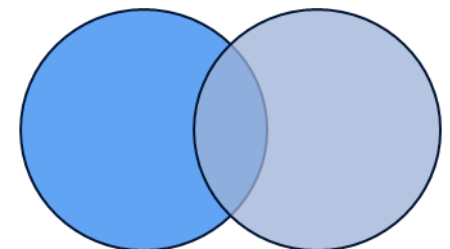
Perfectionism: "one of this country's finest legal brains". (politician)

Individualism: "too proud to discuss his depression with anyone" (wife)

Dedication: "the relentless pressures of his practice, crowded out the time needed to look after his own health " (Coroner)

Outside: "He had all the attributes that any criminal barrister would want."
(President of the Bar Association)

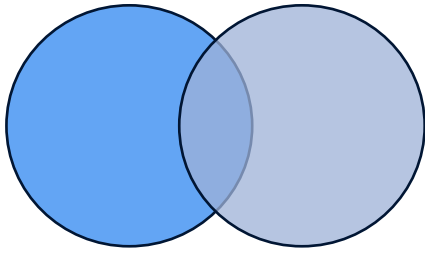
Inside: "exhausted, unwell, burnt out, disillusioned, depressed, and haunted".
(suicide note)



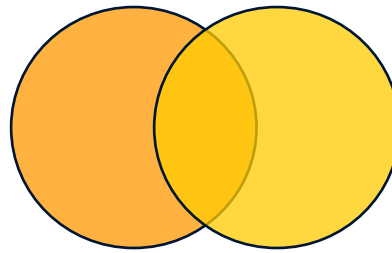
Smiling & Struggling

Questions and Reflections?

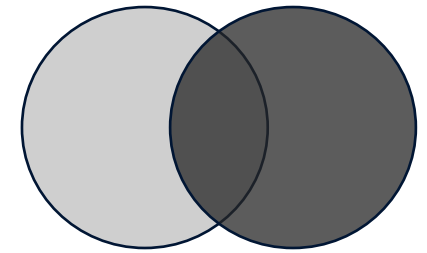
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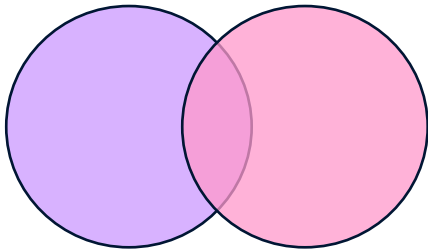
Smiling & Struggling



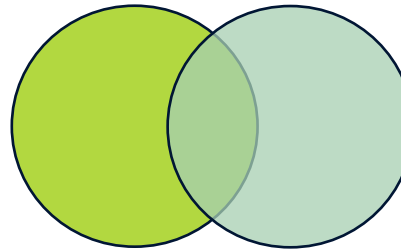
Surrounded & Alone



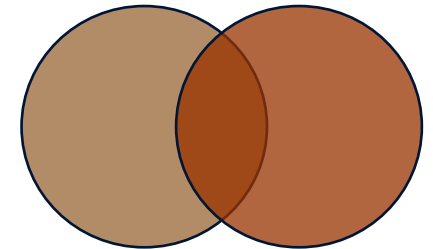
Powerful & Vulnerable



Random & Predictable



Unwell & Accountable



Kind & Strong

Hold two opposed ideas in mind

The test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function.

-F. Scott Fitzgerald



THE UNIVERSITY OF
MELBOURNE

Questions or reflections?

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October 2023

