

# Substance Abuse and the Legal Profession

Recently the Iowa Supreme Court amended Rule 41.1 & 42.3 to include instruction specifically designed for lawyers regarding substance abuse and mental health.

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# WHY?

- In recent years, as many as one-third of the published disciplinary opinions of the Supreme Court have specifically mentioned substance abuse and/or mental health issues.
- Staff members at the Board and Commission estimate that the majority of founded complaints involve Iowa Lawyers with a substance abuse issue.

# Additionally

- A national study indicated that 40% to 70% of disciplinary actions and malpractice claims are linked to mental illness and/or substance abuse.
- 15% to 18% of lawyers are estimated to have a substance abuse disorder. Some state studies claim a much higher incidence.

# Supreme Court's Response

- Is a preventative measure to reduce disciplinary actions:
- And PREVENT HARM TO CLIENTS.
- Although not mentioned it goes without saying the response main goal is to prevent the Destructive Impact on Lawyers personal welfare and the impact on those associated with the Lawyer.

# NEW RULE

- The definition of what constitutes legal ethics for purposes of the biennial ethics continuing legal education (CLE) attendance requirement is amended to include instruction specifically designed for lawyers regarding substance abuse and mental health.
- The biennial ethics attendance requirement is increased from two to three hours.
- Iowa is one of seven states to include this requirement.

# PART I

- INDIVIDUAL IDENTIFICATION OF SUBSTANCE ABUSE.



# LAWYERS AND THE ABUSE OF SUBSTANCES: A CAUTIONARY TALE

- Lawyers work high stress jobs in a high stress world.
- Rewards of the profession are great, but so are the pressures.
- The incidence of lawyer substance abuse is higher than other professions.
- Problem starts in law school where studies. In response to the added pressures of becoming lawyers, students greater increase their use of alcohol and drugs.

# Theories of Causation

## Who Knows

- What are the causes of substance abuse is more reflective of personal philosophy and belief systems than of empirical evidence.
- The main theories are.

# MORAL MODEL

- Of addiction viewed alcoholism and drug abuse as a sign of moral weakness or moral turpitude.
- Treatment was designed to confront the individual with the consequences of their behavior and to force shame to promote change.
- Outdated.

# DISEASE MODEL

- Substance abuse is fundamentally a medical illness
- Recent evidence about the genetic, biochemical, and pharmacological lends credence to this model.
- Treatments focus on “powerlessness” over illness.
- De-emphasis on the issue of blame and morality.

# BEHAVIORAL MODEL

## “HABIT”

- Views addiction as essentially learned behavior resulting from faulty problem solving, ineffective role modeling, or a complicated system of rewards and punishments.
- An individual is not powerless in the face of the disease but can exhibit control over the behavior.

# NO ONE CAUSE

There is no right answer as to the ultimate cause and it isn't likely that a single cause will be identified. Addiction appears to be the result of many different factors

# Factors Include

- Genetic Predisposition
- Environmental Factors
- Stress
- Trauma
- Learned Behavior
- Or any combination of the above.

# Diathesis-Stress Illness Model

- Some people have a strong genetic load (diathesis) for a particular disease, which may be activated with minimal environmental influence.
- Thus, individuals appear to vary in their genetic propensity to addiction.
- Some people can use substances steadily without developing a dependence.
- Others are less fortunate.



# Genetic Predisposition/RISK LIABILITY

- A look at your family tree: Rates of addiction and particularly alcoholism are significantly higher within some families than the general population.
- Positive family history is a result of both genetic and learned factors.
- The combination of environmental and biological forces combine to increase one's risk.

# OTHER CONTRIBUTING FACTORS

- 35% of lawyers report they are dissatisfied with the profession and would do something else if they could
- Lawyers have the highest rate of depression and suicide of any profession.
- Lawyers typically “self medicate” rather than reaching out for help.

# Identifying the Problem and Doing Something About it

- Black outs, Binge drinking, smell of liquor etc.
- Missed work
- Long weekends
- Leaving work early
- Drinking on the job
- Decline in billable hours
- Sharply reduced revenue production
- Declining health
- Missing Deadlines
- Ignoring Clients
- Complaining Clients
- Behavioral Changes

# Individual Identification

- Due to the independent nature of the profession, the intense pressure of competition, the meeting of continuous deadlines, anxieties of earning a living cause isolation in the profession
- The most difficult problem is identification that the problem exists and the recognition that help is needed.

# DEFENSE MECHANISMS

Denial is a common defense mechanism.

Automatic response designed to avoid something uncomfortable.

To protect ourselves from uncomfortable, feelings and experiences.

Usually fear based; looking bad or feeling we have to give something up we have grown dependent on.

Protect us from painful realities.

# Stages of Denial

Like the disease model of addiction, denial gets stronger and more rigid.

Alcoholics and addicts consciously believe their own denial to avoid the painful reality.

Denial blinds addicts to the cause of their problem—their dependence on drugs or alcohol.

Denial is so powerful that addicts are usually the last to know.

Common form of denial. “I can quit anytime I want to.” “My using isn’t that bad”.

# ESCALATION

- THE DENIAL ESCALATES FOR SOME TO THE POINT THE PURSUIT OF THEIR ADDICTION CLAIMS THEIR LIFE.

# ISOLATION

- Removing ones self from the company of family and friends for the purpose of continuing pursuit of ones addiction.



# RATIONALIZATION

- Giving reasons to explain why we drink or use drugs.
- “ I drink because I hate my job”.

# BLAMING

- Transferring responsibilities for our behavior to other people.
- “I wouldn’t drink if my spouse treated me right.”

# PROJECTION

- Rejecting our own feelings by attributing them to some else.
- “Why is that stupid idiot being so hostile.”

# MINIMIZING

- Refusing to admit to the magnitude of the problem.
- I only have a couple of drinks. Its not a problem.”

# ADDICTION SELF DIAGNOSIS

Ask yourself the following questions

- Do you drink or use drugs alone?
- Have you ever had a complete loss of memory as a result of drinking or drug use?
- Has your physician ever treated you for drinking or drug use?
- Do you drink or use drugs to build up your own self-confidence?
- Have you ever been to a hospital or institution because of drinking or drug use?

- Do you lose time from work due to drinking or drug use?
- Is drinking or drug use making your home life unhappy?
- Do you drink or use drugs because you are shy with other people?
- Is drinking or drug use affecting your reputation?

- Have you gotten into financial difficulties as a result of drinking or drug use?
- Do you turn to lower companions and an inferior environment when drinking or using drugs?
- Does your drinking or drug use make you careless of your families welfare?
- Has your ambition decreased since your drinking or using drugs?

- Do you crave a drink or drugs at a definite time daily?
- Do you want a drink in the morning?
- Does your drinking and or using drugs cause you to have difficulty sleeping?
- Has your efficiency decreased since drinking or using drugs?
- Is drinking or using drugs jeopardizing your job or business?



- Do you drink or use drugs to escape from worries or troubles?

Yes to three or more questions indicates abuse or addiction is present and corrective steps should be taken.

(Courtesy of John Hopkins University Hospital)

# DIAGNOSTIC CRITERIA FOR SUBSTANCE ABUSE (DSM IV)

- A. A maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following occurring within a 12-month period:
  - (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g. repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school, neglect of children or household)

- (2) recurrent substance use in situations in which it is physically hazardous (e.g. driving an automobile or operating a machine when impaired by substance use)
- (3) recurrent substance-related legal problems
- (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance

# DIAGNOSTIC CRITERIA FOR SUBSTANCE DEPENDENCE (DSM IV)

- A maladaptive pattern of substance use, leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in same 12-month period:
  - (1) tolerance, as defined by either of the following:
    - (a) a need for markedly increased amounts of the substance to achieve intoxication or desired effect

(b) markedly diminished effect with continued use of the same amount of the substance

(2) Withdrawal, as manifested by either of the following:

(a) the characteristic withdrawal symptom for the substance

(b) the same or closely related substance is taken to relieve or avoid withdrawal symptoms

(3) The substance is often taken in larger amounts or over a longer period than was intended.

- (4) there is a persistent desire or unsuccessful effort to cut down or control substance use
- (5) a great deal of time is spent in activities necessary to obtain the substance.
- (6) important social, occupational or recreational activities are given up or reduced because of substance use
- (7) the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance.

# EFFECTIVENESS OF ADDICTIONS TREATMENT

- In addition to stopping abuse, the goal of treatment is to return the individual to productive functioning in the family, community and profession.
- Overall treatment of addictions is as successful as treatment of other chronic conditions such as diabetes, hypertension, and asthma.

# PART II

- ETHICAL OBLIGATION OF THE IOWA BAR
  - AND
  - SELF-REGULATION



# AM I MY SISTERS OR BROTHERS KEEPER

- According the Rules of Professional Conduct.
- Yes.

# REPORTING PROFESSIONAL MISCONDUCT

- Rule 32:8:3
- A lawyer who knows that another lawyer has committed a violation of the Iowa Rules of Professional Conduct shall inform the appropriate authority.

# Confidentiality

- According to Rule 32:1:6
- The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question.
- This situation is governed by the rules applicable to the client-lawyer relationship and Iowa Code 622.10

# Other Exceptions

- Information about a lawyer's misconduct may be received by a lawyer in the course of that lawyer's participation in an approved assistance program. No duty to report.
- The goal is to encourage lawyers to seek treatment through such programs.
- Without this exception lawyers would hesitate to seek assistance from these programs which, may then result in additional harm to their professional careers and further injury to the welfare of the client and the public.

# MISCONDUCT

- Rule 32:8:4
- It is professional misconduct to:
  - (a) violate or attempt to violate the Iowa Rules of professional misconduct.
  - (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
  - (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
  - (d) engage in conduct that prejudicial to the administration of justice.

# Substance Abuse & Misconduct

- Usually it's the results of substance abuse that will get your ticket punched.
- I.e. dishonesty fraud, deceit, or misrepresentation as a result of the abuse of the substance.
- However the Supreme Court has stated
  - “criminal conduct committed by lawyers, including drug and substance abuse crimes, constitutes a serious violation of our code of ethics” Iowa Supreme Ct Bd of Prof Ethics & Conduct v. Bernard No. 02-0731).

- “This conduct not only adversely impacts the fitness of a lawyer to practice law, it impacts the reputation of the profession as a whole.”  
Iowa Supreme Ct, Bd of Prof Ethics & Conduct  
v. Ruth 626 NW2d 86, 89 (Iowa 2002).

# AND

- The Court has repeatedly stated:
- “The use of illegal drugs is incompatible with the practice of law.” *Id.*
- Midnight Tokers beware.



# Do I know a Lawyer...

- The most difficult problem for a troubled lawyer is identifying that they have a problem.
- Most lawyers are reluctant to report incompetent or impaired colleagues, even though they are obligated under the rules.
- “Conspiracy of Silence” is the greatest obstacle to appropriate self regulation of the legal profession.

# Enabling

- Most lawyers consciously or “unconsciously help colleagues block perception of their illness”.

# SIGNALS OR WARNING SIGNS A COLLEAGUE IS IN TROUBLE

- Long weekends or frequent late arrivals
- Early departures from work;
- Failure to file Court papers;
- Missing court appearances and appointments;
- Neglecting correspondence & phone messages;
- “borrowing” from client trust funds;
- Missing deadlines.

# COVER UP

- Enabling in its truest form;
- Secretaries, associates, partners, even judges often participate in a “Cover-up”.
- When this happens the abusing lawyer is “enabled” to progress deeper and deeper in to addiction.

# Resulting Harm

- To clients is not something from which colleagues should hold themselves entirely blameless.
- In the future the regulating body (i.e. Supreme Court) may not permit colleagues in the legal community to hold themselves blameless.
- Should firms, partnerships, etc. be permitted to escape liability to clients for a risk they knew existed but took no steps to prevent.

# SELF REGULATION

- Conspiracy of Silence needs to end.
- There is a duty to report an impaired lawyer as a critical element of self-regulation of the profession.
- Use of sanctions against lawyers who knowingly fail to meet this obligation of self-regulation.
- In purely human terms, we owe it to ourselves, as individuals and as a profession to take care of our own.

# RECOMMENDED STEPS

- Individual Confrontation
- Group Confrontation (Intervention)
- Contact Lawyers Assistance Program
- Notify the Supreme Court