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If There Is One Bar a Lawyer Cannot Seem to Pass: Alcoholism in the Legal Profession

BY PATRICK R. KRILL

Why do people hire attorneys? Generally speaking, because they have a problem. The problem could be immediate, involving physical liberty; it could be ongoing, requiring the steady navigation of a complex transaction. Either way, the client has a problem, and the attorney is supposed to solve it. Fair enough—this sounds like a straightforward relationship between demand and supply, need and provision, expectation and performance. But what if an attorney hired for his or her ability to solve someone else's problem is otherwise beleaguered by an unrelenting trouble of his or her own—an insidious obstacle of frequent significance and malignancy? What happens when the individual tasked with resolving a client's pressing issue is secretly buckling under the mounting weight of his or her own debilitating burden? Unfortunately, when that burden is addiction to alcohol or other drugs, what happens is almost never good.

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TIP

Alcoholism is all around us in the practice of law, but we generally don't know what to do about it. Addressing the issue is more important and less complex than you think.

No, as it turns out, attorneys who struggle with alcohol dependence—who struggle with the disease of addiction—are substantially more likely to underserve their clients, commit malpractice, face disciplinary action and disbarment, fall victim to mental health problems, and even take their own lives. Notably, at least 25 percent of attorneys who face formal disciplinary charges from their state bar are identified as suffering from addiction or other mental illness, with substance abuse playing at least some role in 60 percent of all disciplinary cases. Furthermore, approximately 60 percent of all malpractice claims and 85 percent of all trust fund violation cases involve substance abuse.[1]

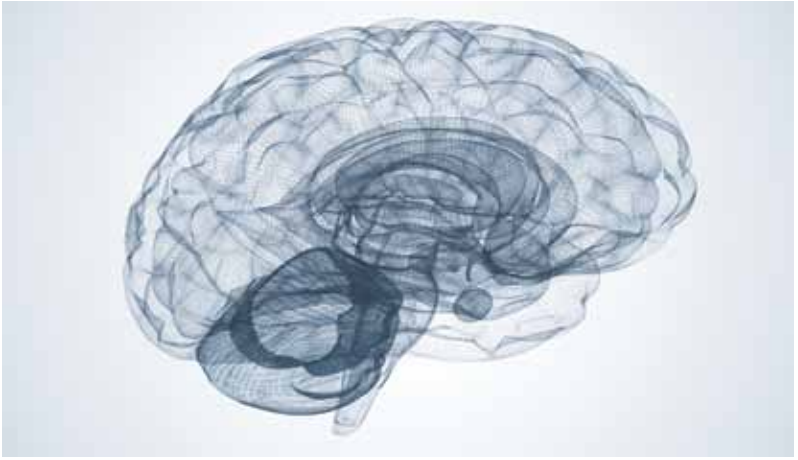
In short, attorneys and alcohol addiction are an ill-fated duo, an especially incompatible pair often bound for disastrous horizons at the end of a high-stakes sail through personal anguish and professional negligence. Sadly though, that grim forecast doesn't keep them from dancing together; it doesn't stop them from meeting in a bar and forging a bond of toxic inseparability capable of steadfastly enduring beyond any professional oath or personal vow. In fact, attorneys are more than twice as likely to struggle with alcoholism as the general population,[2] and some estimates peg the number of alcoholic attorneys at one in five.[3] The numbers are, in a word, sobering.

Patrick R. Krill *is the director of the Legal Professionals Program at the Hazelden Betty Ford Foundation in Center City, Minnesota, where he helps addicted attorneys, judges, and law students to better understand, prepare for, and overcome the distinctive challenges they face in recovery. Krill, a licensed, board-certified drug and alcohol counselor and licensed attorney, is a frequent author and speaker on the subject of addiction and its intersection with the law. He may be reached at pkrill@hazelden.org.*

So what do you do if you or a colleague is facing this issue? First, you have to understand the basics of why addiction to alcohol or drugs is, in fact, a disease. Second, you must learn to identify the behaviors associated with the disease and how they might manifest in the context of a law practice. Finally, you must learn how to confront and combat the disease through practical strategies after familiarizing yourself with available resources and treatment options.

Alcoholism Is a Disease?

Though still difficult for some laypersons to fully accept or acknowledge, addiction to alcohol or drugs is a disease: a primary, chronic, progressive, and often fatal disease that has been recognized as such by the American Medical Association and World Health Organization for decades. Addiction shares many features with other chronic illnesses, including a tendency to run in families (genetic heritability), an onset and course that is influenced by environmental conditions and behavior, and the ability to respond to appropriate treatment that may include long-term lifestyle modification.[4]



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Specifically, alcohol addiction is a brain disease. Research has shown that addiction is not a matter of an individual's strength, moral character, willpower, or weakness. Instead, it can be attributed to the way a person's brain is hardwired. By way of example, the brain of a nonaddict engaging in healthy, pleasurable activities will release dopamine—a naturally produced brain chemical known as a neurotransmitter. Dopamine effectively produces feelings of pleasure, reward, and satisfaction. In other words, dopamine can be described as a natural high. Dopamine is also released from the use of alcohol and other drugs. If the body becomes accustomed to receiving large amounts of this neurotransmitter due to substance use on a regular basis, the brain's own natural capacity for producing it is diminished. The individual essentially becomes dependent on his or her drug of choice for feeling good and sometimes just for feeling *normal*.

Eventually, the brain's own internal circuitry for assessing reward begins to identify the alcohol or other drug as more desirable and important than just about anything else in life. The individual will begin to act accordingly, engaging in a spectrum of increasingly problematic behavior in order to satisfy an ever-heightening and typically intense reliance on and craving for that substance. In short, once the disease of addiction begins to take hold, it "hijacks" the brain of the alcoholic/addict, typically muting

his or her capacity for sound judgment and overriding the will to behave congruently with his or her ethics, morals, standards, values, and responsibilities.

By way of contrast with other chronic and oftentimes fatal diseases, however, there is one very profound difference between addiction and, say, cancer, that merits brief mention and draws the sinister nature of this brain disease into sharper focus. When a person is diagnosed with cancer, he or she commonly becomes immersed in an outpouring of sympathy, support, love, and concern from family, friends, and coworkers. People tend to feel bad for someone who has fallen victim to cancer; cancer makes us want to help the sufferer. Sadly though, people struggling with the disease of addiction usually find themselves in a different boat altogether—marooned on opposite emotional shores from family and friends, separated from empathy by the gulf of deception and dishonesty their disease has often spilt forth into their lives.

Furthermore, as the behaviors and words of an alcoholic might continue to alienate those who would otherwise care for and love him or her, the disease gains strength and momentum through the alcoholic's growing isolation, lack of support, and absence of accountability—clearly, a very problematic cycle that makes the disease that much harder to overcome.

Finally, it is worth noting that, similar to other diseases with certain risk factors (e.g., heart disease and smoking, diabetes and diet), the disease of addiction also has risk factors that can markedly increase one's vulnerability. In addition to the already mentioned genetic component, susceptibility to addiction is also influenced by stress and social environments. Given the high-stress nature of most legal practices and the always tacit—and many times explicit—approval of alcohol as both a stress reliever and "social lubricant" for the professional interactions of most attorneys, it is easy to understand how they might find themselves at an increased risk for succumbing to addiction. The historically accepted role of alcohol in law school and law firm cultures has done nothing to help this problem, with both anecdotal and factual data to suggest that many attorneys consider heavy drinking something of an occupational hazard. Unfortunately for some, that hazard ultimately becomes peril, both for themselves and their firms.

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How Is the Disease of Alcoholism Diagnosed?

An actual diagnosis relating to one's alcohol use requires a structured clinical interview with a licensed professional, but a look at some of the general diagnostic criteria that would be used in such an interview is instructive. These criteria come from the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) and span a wide variety of problems that may arise from the use of alcohol:

1. Taking the substance in larger amounts or for longer than you were meant to;
2. Wanting to cut down or stop using the substance but not managing to;
3. Spending a lot of time getting, using, or recovering from use of the substance;
4. Cravings and urges to use the substance;
5. Not managing to do what you should at work, home, or school because of substance use;
6. Continuing to use, even when it causes problems in relationships;
7. Giving up important social, occupational, or recreational activities because of substance use;
8. Using substances again and again, even when it puts you in danger;
9. Continuing to use, even when you know you have a physical or psychological problem that could have been caused or made worse by the substance;
10. Needing more of the substance to get the effect you want (tolerance); and
11. Development of withdrawal symptoms, which can be relieved by taking more of the substance.

While these criteria seem straightforward enough, it's not always an easy task to recognize their manifestation in ourselves or those around us, especially when we and those around us are attorneys—highly persuasive professionals endowed with advanced reasoning and verbal abilities, outwardly confident demeanors, and a knack for working very hard to accomplish goals.

Further complicating the addiction scenario for most attorneys is their own well-oiled denial machine—a finely tuned mechanism fueled not only by their disease, but also by their years of legal training in which the ability to craft a convincing argument demonstrates professional competence and skill. "Making the case" for why they couldn't possibly be an alcoholic is something that comes naturally to attorneys and frequently results not only in their keeping others in the dark, but also in their having a sometimes wildly inaccurate self-perception surrounding their alcohol/drug use.

Although many attorneys will deny their addiction to alcohol well

beyond the ostensible point of reason, there are a number of common telltale behaviors that tend to emerge with these individuals. A noncomprehensive list of these behaviors might include:

- Blowing deadlines or neglecting work;
- Diminishing quality of work;
- Suddenly closing their office door more frequently and otherwise attempting to avoid colleagues, partners, and administrative staff;
- Unexplained lack of interest and enthusiasm toward their practice;
- Unexplained change in appearance or disposition;
- Missing or arriving late to meetings, court appearances, or depositions;
- Drinking before meetings, depositions, court appearances, or otherwise at inappropriate times;
- Willingness to drive under the influence;
- Drinking before interactions with difficult clients in order to maintain their calm and composure;
- Blaming others (colleagues, support staff, or outside contractors) for errors and missed deadlines; and
- Minimizing, downplaying, hiding, or lying about frequency and/or amount of drinking.

What Can Be Done about It?

While it may never be the easy thing to do, taking action against addiction is, in fact, many times unavoidable from a business and human perspective—times when doing *nothing* would simply fail to qualify as a legitimate, ethical, or financially responsible decision.

Perhaps more so in the legal profession than anywhere else, a duty to confront addiction should attach, with ignoring the problem or participating in a cover-up amounting to either tacit consent or active enablement. While different jurisdictions employ different specific standards regarding the duties of attorneys to report themselves or others for misconduct, blatantly disregarding a colleague's chemical impairment is widely acknowledged to violate the spirit, if not the letter, of the Model Rules of Professional Conduct. To that point, the ABA ethics committee has concluded that a mental condition which materially impairs an attorney's ability to practice law gives rise to a duty to report; such impairment may be the result of alcoholism, drug addiction, and substance abuse.[5] Indeed, a "head in the sand" approach to a lawyer's chemical impairment is an unwise flirtation with debacle—an invitation to disaster whose acceptance is all but certain with the passing of time. Assuming that doesn't sound good to you, there is another alternative; approached thoughtfully and resolutely, there is a solution. In order to get to that solution, however, you need to start with a plan.

> Remain cognizant of two paramount considerations: Reputation matters, and change takes time.

Your plan should reflect deliberation and care, but also a clear predisposition toward action: analysis paralysis is just as unhelpful in this situation as hasty effort. You must prepare, but then act—don't let perfect be the enemy of good. One of the most widely known facts about the disease of addiction is that the sooner it is arrested, the better the chances are of lifelong recovery taking hold.

Whether for yourself or an impared colleague, an atmosphere of dignity, respect, confidentiality, and empathy is critical to successfully confronting a legal professional's addiction. These four principles should be the framework around which any plan for addressing this issue is constructed. (Remember though, we're talking about a serious brain disease, with hallmark characteristics including denial, minimization, dishonesty, and rationalization; hauling it into the light and exposing its malevolent rancor will undoubtedly involve some level of collateral discomfort and unpleasantness. Doing the best you can in these four areas will have to suffice.)

Moving forward with those principles in mind, the flexibly linear steps in the process are assessment, intervention, treatment, and reintegration. By flexibly linear, I mean that an assessment will typically precede an intervention (formal or informal) but not always; treatment should come next, and workplace reintegration will frequently—but not necessarily—be the end goal. For the sake of clarity, defining our terms is helpful:

Assessment. Assessment refers to a chemical dependency assessment. A thorough assessment should involve a telephonic or in-person interview with a licensed clinician in which the individual's chemical use is reviewed in tandem with the impact of that use on his or her daily life, relationships, and so-called "global functioning." The assessment may also include an individual diagnostic test such as a questionnaire; a review of relevant medical, legal, mental health, and prior treatment records; a physical screening and assessment for detoxification needs; and interviews with other people in that individual's

life. Ideally, an assessment should address an individual's unique needs (i.e., his or her profession as an attorney) and the associated challenges they may present to his or her potential treatment and recovery.

Intervention. Intervention refers to a structured process or event designed to draw the chemically dependent individual into a space of clarity and awareness about the extent of his or her problem and need for help. It's important to note that while the intervention may or may not include the use of trained professionals, it should never be an impromptu proceeding cobbled together on the fly or in the heat of passion. Instead, a successful intervention will be scripted, planned, and orchestrated with forethought to maximize a climate of dignity, respect, and love. For individuals who are open, receptive, and aware of their problem and need for help, intervening may be completely unnecessary, and the emphasis should therefore shift to providing support and encouragement.

Treatment. Treatment refers to participation in an addiction treatment program, either residential or outpatient, which could involve a variable length of time ranging from 28 days to several months.

Reintegration. Reintegration refers to a return to work following treatment and during the newly entered process of ongoing recovery. Clearly, not all legal professionals who take a leave of absence from their employment to address their addiction will ultimately return to the same employer—sometimes severing ties is inevitable. Still, for many who do seek treatment and successfully embark upon recovery, a return to their previous employment may be in the cards.

Reputation Matters, and Change Takes Time

In pursuing each of these goals—whether for a professional colleague, family member, or even yourself—it's important to remain cognizant of two paramount considerations: reputation matters, and change takes time. Regarding professional reputation, every stage of confronting and managing the disease of addiction is appropriate for the enlistment of professional assistance (with treatment unarguably taking precedence in this regard), and you should be thorough and diligent in selecting who will help you. Just as it would be negligent to assume that "any old lawyer will do" in regard to an important legal matter, it would be equally naïve to view all professionals, programs, and available resources in the addiction field as somehow interchangeable, equal, or suitable for every individual.

Among the important factors to weigh in this decision are: whether the program or professional in question operates from a widely accepted and evidence-based treatment and recovery philosophy or whether the approach seems more experimental, ad-hoc, or untested; licensure and credentialing; years of experience/number of years in operation; cost; consumer and peer reviews; and, finally, your own reaction to the level of customer service and professionalism when you make an inquiry. As a rule of thumb, state lawyer assistance programs (LAPs) are generally a good starting point for seeking input, direction, and referrals. Employee assistance programs (EAPs) will typically be able to offer helpful guidance as well.

The second fundamental issue for you to remember is that change takes time. This is true not only in terms of the individual's making important lifestyle adjustments and learning new coping skills for a successful recovery, but also in terms of his or her workplace reintegration. One of the most common mistakes an attorney attempting recovery can make is rushing back to work too soon or under too heavy of an initial workload; reintegration into the practice of law after such a profound event as getting clean and sober should be approached with patience and respect for the process.

Conclusion

Confronting the disease of addiction in others or oneself is no small feat, no minor hurdle. Indeed, its unique challenges and sometimes intimidating dilemmas make it a trial unlike any other, and, for what it's worth, this is one trial where speediness is not the goal. ■

Notes

1. *See* G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse among United States Lawyers*, 13 Int'l J.L. & Psychiatry 233 (1990); Deborah Brook, *Impairment in the Medical and Legal Professions*, 43 J. Psychosomatic Res. 27 (1997).

2. *See* Substance Abuse & Mental Health Servs. Admin., Dep't of Health & Human Servs., Results from the 2007 National Survey on Drug Use and Health: National Findings (2008).

3. These numbers regarding attorney addiction rates are approximately 20 years old. The American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation are collaborating to develop and administer a new nationwide survey of the current substance use rates of attorneys. Results of the survey will be published in 2015.

4. *See* A. Thomas McLellan et al., *Drug Dependence, a Chronic Medical Illness: Implications for Treatment, Insurance, and Outcomes Evaluation*, 284 JAMA 1689 (2000) (comparing alcoholism/drug addiction with type 2 diabetes mellitus, hypertension, and asthma, and concluding that, based on the many similarities, alcoholism/drug addiction should be evaluated, insured, and treated just like these other chronic illnesses).

5. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 03-429 (2003).

