

Meeting Iowa Legal Ethics Requirements Relating to:

Mental Health and Substance Abuse Issues Affecting Iowa Lawyers

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In Iowa, the Supreme Court has a requirement for a minimum of 15 hours of accredited continuing legal education per year. Rule 41.3(1). In 2012, the Rules relating to the requirement for continuing legal education in the area of Ethics changed, and now provide:

The 15 hours required by Rules 41.3(1) shall include a minimum of 3 hours, every two calendar years, devoted exclusively to the area of legal ethics. Excess hours of education devoted to legal ethics can be carried over for purposes of the annual 15-hour requirement under Rules 41.3(1) but cannot be carried over beyond the two-year period for the special legal ethics requirement under this rule.

The Iowa Supreme Court also changed the definition of “accredited program activity” for continuing legal education in 2012. Now, Rule 42.1 provides that programs on legal ethics not only refer to those that discuss the disciplinary rules or ethical considerations for practice, but also those that are:

[D]esigned to help attorneys detect, prevent, or respond to substance-related disorders or mental illness that impairs professional competence. The instruction must focus on issues in the legal profession and in the practice of law, and *not on issues of substance-related disorders or mental health in general*. (Emphasis added).

In this presentation we will discuss some of substance-related disorders or mental illness issues that impairs us as a profession.

DEFINITIONS

Occupational Stress: Job characteristics that impact an individual's physical or mental health. Certain aspects of work roles are associated with occupational stress: role overload, role insufficiency, role ambiguity, role boundary, role conflict, responsibility, and physical environment.

Psychological Strain: Physical, psychological or interpersonal distress that manifests itself in observable symptoms.

Coping Resources: Mediators of stress symptoms or causation, such as social support, recreation, self-care (regular exercise, sleep, health care), and cognitive coping (systematic approach to solving problems).

Technostress: is a result of altered habits of work and collaboration that are being brought about due to the use of modern information technologies.

Technostress may significantly reduce job satisfaction, commitment, innovation, and productivity.

WHERE OCCUPATIONAL STRESS CREATES LEGAL ETHICS ISSUES

The Iowa Supreme Court continues to express concern in its rulings in lawyer disciplinary cases about untreated stress, which can manifest itself in malpractice, neglect of duties to clients and courts, and lead to substance abuse or untreated depression. As lawyers, we have expectations of the level and quality of work we can produce, and that we always have “the answers.” We are reluctant to say no to any opportunity, because it may lead to more work, another client, improve our standing in the legal profession, and the community. We have our licenses because we care about people’s problems, and think we can solve them. However, without some balance, and the ability to regulate stress, attorneys can not only irreparably damage client interests, but their own licenses and reputations. The following are several recent cases where we can see the impact of alcohol, drugs, untreated mental or physical illness, and a lack of stress management on lawyers, which affected their clients, and the public’s confidence in the justice system.

Sobering Statistics¹

- ❖ Lawyers abuse alcohol at a rate of 50-80% higher than the general population [15-18% of attorneys vs. 10% of general population].
- ❖ Over 1/3 of attorneys say they are dissatisfied with the practice of law, and would choose another profession.
- ❖ Attorneys have the highest rate of depression of any profession, and a high suicide rate.
- ❖ Studies by the ABA suggest that over 50% of all disciplinary cases involve impaired lawyers. Some sources claim up to 80%.
- ❖ In the UK, stress was cited by 75% of the lawyers who sought assistance with health problems, caused by: disciplinary proceedings, bullying, financial issues, ethical issues, and relationship issues. Help was also sought for bipolar disorders, gambling addiction, OCD, and substance abuse.

¹ Compiled from:

Iowa Lawyers Assistance Program, <http://www.iowalap.org/facts.html>;

Lawyer Stress and Its Solutions, <http://www.stress-relief-resources.com/lawyer-stress.html>;

Stressed-out lawyers seek help as charity warns of unreported drug problems:

<http://www.legalfutures.couk/practice-points/indemnity-insurance>;

Support Charity LawCare: <http://www.legalfutures.co.uk/resources/services-directory/lawcare-2>,

Jack Focht, Representing the Impaired Lawyer, J. Kan. B. Ass'n, September 2005, at 37

ATTORNEY DISCIPLINARY CASES RESULTING FROM MENTAL HEALTH AND SUBSTANCE ABUSE ISSUES

Revocation of License for Misappropriation of Funds and Domestic Abuse

Guthrie from Waterloo was arrested for domestic abuse assault. Guthrie informed his law partners that he was admitting himself into a substance-abuse treatment program and took a leave of absence from the firm. He also misappropriated funds between \$500 and \$1000 from three clients during the height of his substance abuse. The court took into consideration his steps to address his substance abuse and seek out treatment, however, they found that revocation is the appropriate sanction. Guthrie will be able to apply for reinstatement in five years. *Iowa Supreme Court Attorney Disciplinary Bd. v. Guthrie*, 901 N.W.2d 493 (Iowa 2017).

Alcohol Abuse leads to Indefinite Suspension

Khowassah received an indefinite suspension from the practice of law with no possibility of reinstatement for a period of six months for two separate alcohol-related incidents that resulted in arrests and convictions. The first incident occurred in the early morning hours of June, 2014. Khowassah was intoxicated while in downtown Iowa City. He intervened with police officers who were engaged in an encounter with another individual, and Khowassah was arrested and charged with interference with official acts. He pled guilty to public intoxication, a simple misdemeanor. One week later, Iowa City police found Khowassah sleeping in the driver's seat of his vehicle while it was parked in a parking ramp with the engine running. He was intoxicated. He was arrested and charged with OWI, third offense. Khowassah pled guilty to OWI, second offense, an aggravated misdemeanor. Khowassah testified at his hearing that he was engaged in rehabilitative efforts and is attempting to live a healthy and sober lifestyle, including attending counseling and substance abuse treatment. The Court found that his efforts show he is now willing to acknowledge the problems that led to his misconduct and address his misuse of alcohol. Previously, Khowassah underwent a substance abuse evaluation that recommended intensive outpatient treatment to deal with his alcohol abuse. Instead of seeking this treatment, Khowassah chose to travel overseas for the summer. *Iowa Supreme Court Attorney Disciplinary Bd. v. Khowassah*, 890 N.W.2d 647 (Iowa 2017).

Suspension for Sexual Relationship with Client

Waterman practices law in Iowa City. In May 2014, Jane Doe met with Waterman for legal advice on a dissolution of marriage. Waterman and Doe began to have a romantic and sexual relationship, at which time Waterman suggested to Doe that they needed to discontinue their professional relationship and that she should seek other counsel. Believing that a settlement was imminent, Doe did not retain a substitute attorney, and Waterman remained her attorney of record. At the time that it became apparent that the case would continue with additional discovery relating to custody, including discovery on Waterman's relationship with Doe, Waterman self-reported his violation of ethical rules to the board. At the hearing, Waterman testified that he had been diagnosed with a depressive disorder in 2012 and had previously sought out therapy, although he stopped attending in 2013. The court took into account Waterman's decision to seek therapy to address certain mental

health issues that may have contributed to his misconduct as a mitigating factor. Waterman received a 30-day suspension from the practice of law. *Iowa Supreme Court Attorney Disciplinary Bd. v. Waterman*, 890 N.W.2d 327 (Iowa 2017).

Thirty Day Suspension for “Black Out” Domestic Abuse Incident

A Des Moines attorney's commission of domestic assault and criminal trespass violated professional conduct rules prohibiting commission of a criminal act that reflected adversely on attorney's fitness as lawyer. In April 2014 the Des Moines attorney broke into his girlfriend's home causing damage to the door. The attorney then left and returned to the residence, at which time the girlfriend was present. The attorney assaulted his girlfriend by hitting her repeatedly and pulling out clumps of her hair. Although the attorney claimed the assault resulted from a blackout state, his therapist testified that he could still distinguish between right and wrong during the commission of his crimes. The attorney was suspended for thirty days, and the court required evidence of continued recovery efforts and evidence that the attorney was mentally fit to practice law. *Iowa Supreme Court Attorney Disciplinary Bd. v. Deremiah*, 875 N.W.2d 728 (Iowa 2016).

Seeking Counseling Considered a Mitigating Factor in Discipline for Sexual Relationship with Client

An Altoona attorney was originally appointed to represent John Doe in a child-in-need-of-assistance (CINA) matter. Three years later, the Altoona attorney started representing John Doe in a number of criminal matters. At this time the attorney and client began having an intimate sexual relationship. One of the cases involved a confidential informant and based on a monitored and recorded phone calls from the jail, the FBI discovered the relationship. Agents questioned the attorney about the sexual relationship, at which time the attorney withdrew from the case and reported herself to the disciplinary board. In their recommendation to the Court, the Board took into account the attorneys steps to seek counseling to address certain mental health issues that may have contributed to her misconduct. The attorney was suspended for 30 days. *Iowa Supreme Court Attorney Disciplinary Bd. v. Johnson*, 884 N.W.2d 772, 775 (Iowa 2016).

Counseling Considered Mitigating Factor In Conflict Of Interest Violations

A spirit lake attorney was found in violations of several ethical rules arising out of two separate matters. Both dealt with conflicts of interest in which the attorney represented a landlord and tenant, and a subsequent opposing client. For both, the misconduct resulted in thousands of dollars spent by the clients in litigation remedying the issues. The attorney disclosed that he struggled with depression, that his family had a history of depression, and a friend of his committed suicide during this time. Although the Board found the attorney's pursuit of counseling and treatment as a mitigating factor, they recommended, and the court issued, a sixty-day suspension of the attorney's license. *Iowa Supreme Court Attorney Disciplinary Bd. v. Stoller*, 879 N.W.2d 199, 214 (Iowa 2016).

Mental Health Treatment Used as Mitigating Factor

A Warran county attorney had her license suspended for thirty days after violating several rules regarding client funds and failing to respond to the Client Security Commission audit requests. The auditor found the funds in the attorney's trust account were nearly \$8000 short. Specifically,

the commission found that she violated rules by commingling personal funds with those of her clients, failing to perform trust account reconciliations, failing to deposit advance fee payments into the trust account, failing to notify clients when their funds were withdrawn from her trust account. In her defense, the attorney testified that she is receiving treatment for attention deficit disorder and that the treatment will assist her in managing her trust account going forward. The court used her pursuit of treatment as a mitigating factor. *Iowa Supreme Court Attorney Disciplinary Bd. v. Eslick*, 859 N.W.2d 198 (Iowa 2015).

Sixty Day Suspension for Neglect of Clients

A Decorah attorney was suspended after violating multiple rules of professional conduct stemming from multiple clients. The attorney received a bipolar disorder diagnosis while she was in law school and has consistently taken prescribed medications to manage her disorder. Additionally, she has struggled with alcoholism for more than 20 years.

The attorney was facing immigration issues with her new husband which caused her significant stress leading up to and immediately following the marriage. While coping with the stress of the immigration issue and the bipolar disorder, the attorney drank alcohol heavily and frequently. Her life very quickly spun out of control, and by December her daily routine consisted only of buying alcohol, drinking alcohol, and sleeping. She did not open her mail, and she stopped responding to all communication from clients, opposing attorneys, court staff and judges, and the Board.

Eventually, the Board filed a multi-count complaint alleging the attorney violated numerous provisions of the Iowa Rules of Professional Conduct, including, neglect, failure to keep a client informed about the status of their matter, failure to comply promptly with reasonable requests for information, failure to withdraw from representation when required.

The court took into account the attorney's robust rehabilitative efforts to control or eliminate her alcoholism. The Court noted that Alcoholism does not justify or excuse ethical misconduct, but it can be a mitigating factor in determining the proper sanction. *Iowa Supreme Court Attorney Disciplinary Bd. v. Kingery*, No. 15-0673 (Iowa 2015).

RELEVANT IOWA COURT RULES

CHAPTER 32 IOWA RULES OF PROFESSIONAL CONDUCT

Rule 32:1.1: COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Comment

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than

matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See rule 32:1.2(c).

Rule 32:1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 32:1.16: DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded.

Rule 32:8.3: REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Iowa Rules of Professional Conduct shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by rule 32:1.6 or Iowa Code section 622.10 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Iowa Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

CHAPTER 34 ATTORNEY DISCIPLINARY BOARD

Rule 34.12 ORDER FOR MENTAL OR PHYSICAL EXAMINATION OR TREATMENT.

34.12(1) *Order requiring examination or treatment.* An attorney who is licensed to practice law in the state of Iowa is, as a condition of licensure, under a duty to submit to a mental or physical examination or subsequent treatment as ordered by the Iowa Supreme Court Attorney Disciplinary Board. The board may order the examination or treatment based upon a showing of probable cause to believe the attorney is suffering from a condition that currently impairs the attorney's ability to discharge professional duties. The board may order that the examination or treatment be at the attorney's expense.

34.12(2) *Show cause hearing.* Before the board may order an attorney to submit to examination or treatment, it shall schedule a hearing to permit the attorney to show cause why the order

should not be entered. At least three members of the board shall participate in the hearing. At the hearing, the board's staff counsel shall first present evidence of probable cause supporting the need for evaluation or treatment. The attorney may then respond to the board's showing and rebut the board's claim that the evaluation or treatment is necessary. The hearing shall be informal and rules of evidence shall not be strictly applied. Following the hearing, the board, by majority vote, shall either dismiss the matter or enter an order requiring the examination or treatment.

34.12(3) *Content of order.* The board's order for mental or physical examination or treatment shall include all of the following terms:

- a.* A description of the type of examination or treatment to which the attorney must submit.
- b.* The name and address of the examiner or treatment facility that the board has identified to perform the examination or provide the treatment.
- c.* The time period in which the attorney must schedule the examination or enter treatment.
- d.* The amount of time in which the attorney is required to complete the examination or treatment.
- e.* A requirement that the attorney cause a report or reports of the examination or treatment results to be provided to the board within a specified period of time.
- f.* A requirement that the attorney communicate with the board regarding the status of the examination or treatment.
- g.* A provision allowing the attorney to request additional time to schedule or complete the examination or to request that the board approve an alternative examiner or treatment facility. The board shall, in its sole discretion, determine whether to grant such a request.

34.12(4) *Review.* An attorney who disagrees with the board's order may seek review from the Supreme Court. The attorney may do so by filing nine copies of a petition for review with the clerk of the Supreme Court and serving one copy of the petition on the board within seven days after receipt of the board's order. The board may file nine copies and serve one copy of a response to the petition within seven days after service of the petition. The matter shall be promptly set for hearing before one or more justices of the Supreme Court. The board's order is stayed upon the filing of the petition for review.

34.12(5) *Hearing.* At the hearing on the petition, the board shall present evidence of probable cause supporting its order and the necessity for the evaluation or treatment. The attorney may then respond to the board's showing and rebut the board's claim that the evaluation or treatment is necessary. The hearing shall be informal and rules of evidence shall not be strictly applied. Following the hearing, the court may affirm, vacate, or modify the board's order or may enter such order as the circumstances warrant.

34.12(6) *Failure to submit.* The failure of an attorney to submit to the evaluation or treatment ordered by the board under this rule may be grounds for discipline through the normal disciplinary process.

34.12(7) *"Condition."* For purposes of this rule, "condition" means any physiological, mental or psychological condition, impairment or disorder, including drug or alcohol addiction or abuse.

CHAPTER 35 ATTORNEY DISCIPLINE, DISABILITY, AND REINSTATEMENT

Rule 35.17 DISABILITY SUSPENSION.

35.17(1) In the event an attorney shall at any time in any jurisdiction be duly adjudicated a mentally incapacitated person, or person with a substance-related disorder, or shall be committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which any such adjudication or commitment is entered shall, within ten days, certify same to the clerk of the supreme court.

35.17(2) Upon the filing of any such certificate or a like certificate from another jurisdiction or upon determination by the supreme court pursuant to a sworn application on behalf of a local bar association or the Iowa Supreme Court Attorney Disciplinary Board that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, the supreme court may enter an order suspending the attorney's license to practice law in this state until further order of the court. Not less than 20 days prior to the effective date of such suspension, the attorney or the attorney's guardian and the director of the institution or hospital to which the attorney has been committed, if any, shall be notified, in writing directed by restricted certified mail to the last address as shown by the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and place and show cause why such suspension should not take place. Upon a showing of exigent circumstances, emergency or other compelling cause, the Supreme Court may reduce or waive the 20-day period and the effective date of action above referred to. Any hearing shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order shall be given to the suspended attorney, or to the attorney's guardian and the director of the institution or hospital to which such suspended attorney has been committed, if any, by restricted mail or personal service as the Supreme Court may direct.

RELEVANT MENTAL ILLNESS AND SUBSTANCE ABUSE DIAGNOSTIC CRITERIA²

Alcohol and Substance Use Disorder

Diagnostic Criteria

- A. A problematic pattern of alcohol use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:
 1. Alcohol/substance is often taken in larger amounts or over a longer period than was intended.
 2. There is a persistent desire or unsuccessful efforts to cut down or control alcohol/substance use.
 3. A great deal of time is spent in activities necessary to obtain alcohol/substance, use alcohol/substance, or recover from its effects.
 4. Craving, or a strong desire or urge to use alcohol/substance.
 5. Recurrent alcohol/substance use resulting in a failure to fulfill major role obligations at work, school, or home.
 6. Continued alcohol/substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol/substance.
 7. Important social, occupational, or recreational activities are given up or reduced because of alcohol/substance use.
 8. Recurrent alcohol/substance use in situations in which it is physically hazardous.
 9. Alcohol/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 alcohol/substance.
 10. Tolerance, as defined by either of the following:
 - a. A need for markedly increased amounts of alcohol/substance to achieve intoxication or desired effect.
 - b. A markedly diminished effect with continued use of the same amount of alcohol/substance.
 11. Withdrawal, as manifested by either of the following:
 - a. The characteristic withdrawal syndrome for alcohol/substance.
 - b. Alcohol/substance is taken to relieve or avoid withdrawal symptoms.

Mild: Presence of 2–3 symptoms.

Moderate: Presence of 4–5 symptoms.

Severe: Presence of 6 or more symptoms.

Generalized Anxiety Disorder

Diagnostic Criteria

- A. Excessive anxiety and worry (apprehensive expectation), occurring more days than not for at least 6 months, about a number of events or activities (such as work or school performance).
- B. The individual finds it difficult to control the worry.
- C. The anxiety and worry are associated with three (or more) of the following six symptoms (with at least some symptoms having been present for more days than not for the past 6 months):

Note: Only one item is required in children.

1. Restlessness or feeling keyed up or on edge.

² Diagnostic and Statistical Manual of Mental Disorders (5th ed. Am. Psychiatric Publishing, Inc. 2013).

2. Being easily fatigued.
3. Difficulty concentrating or mind going blank.
4. Irritability.
5. Muscle tension.
6. Sleep disturbance (difficulty falling or staying asleep, or restless, unsatisfying sleep).
- D. The anxiety, worry, or physical symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Major Depressive Disorder

Diagnostic Criteria

1. Five (or more) of the following symptoms have been present during the same 2-week period and represent a change from previous functioning; at least one of the symptoms is either (1) depressed mood or (2) loss of interest or pleasure.
 1. Depressed mood most of the day, nearly every day, as indicated by either subjective report (e.g., feels sad, empty, hopeless) or observation made by others (e.g., appears tearful).
 2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day (as indicated by either subjective account or observation).
 3. Significant weight loss when not dieting or weight gain (e.g., a change of more than 5% of body weight in a month), or decrease or increase in appetite nearly every day.
 4. Insomnia or hypersomnia nearly every day.
 5. Psychomotor agitation or retardation nearly every day (observable by others, not merely subjective feelings of restlessness or being slowed down).
 6. Fatigue or loss of energy nearly every day.
 7. Feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day (not merely self-reproach or guilt about being sick).
 8. Diminished ability to think or concentrate, or indecisiveness, nearly every day (either by subjective account or as observed by others).
 9. Recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide.
 10. The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

The episode is not attributable to the physiological effects of a substance or to another medical condition.

Persistent Depressive Disorder (Dysthymia)

Diagnostic Criteria

This disorder represents a consolidation of DSM-IV-defined chronic major depressive disorder and dysthymic disorder.

1. Depressed mood for most of the day, for more days than not, as indicated by either subjective account or observation by others, for at least 2 years.
2. Presence, while depressed, of two (or more) of the following:
 1. Poor appetite or overeating.
 2. Insomnia or hypersomnia.
 3. Low energy or fatigue.
 4. Low self-esteem.
 5. Poor concentration or difficulty making decisions.
 6. Feelings of hopelessness.

Acute Stress Disorder

Diagnostic Criteria

1. Exposure to actual or threatened death, serious injury, or sexual violation in one (or more) of the following ways:
 - a. Directly experiencing the traumatic event(s).
 - b. Witnessing, in person, the event(s) as it occurred to others.
 - c. Learning that the event(s) occurred to a close family member or close friend. **Note:** In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.
 - d. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains, police officers repeatedly exposed to details of child abuse).

Note: This does not apply to exposure through electronic media, television, movies, or pictures, unless this exposure is work related.

2. Presence of nine (or more) of the following symptoms from any of the five categories of intrusion, negative mood, dissociation, avoidance, and arousal, beginning or worsening after the traumatic event(s) occurred:

Intrusion Symptoms

- a. Recurrent, involuntary, and intrusive distressing memories of the traumatic event(s).
- b. Recurrent distressing dreams in which the content and/or affect of the dream are related to the event(s).
- c. Dissociative reactions (e.g., flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring. (Such reactions may occur on a continuum, with the most extreme expression being a complete loss of awareness of present surroundings.)
- d. Intense or prolonged psychological distress or marked physiological reactions in response to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).

Negative Mood

- e. Persistent inability to experience positive emotions (e.g., inability to experience happiness, satisfaction, or loving feelings).

Dissociative Symptoms

- f. An altered sense of the reality of one's surroundings or oneself (e.g., seeing oneself from another's perspective, being in a daze, time slowing).
- g. Inability to remember an important aspect of the traumatic event(s) (typically due to dissociative amnesia and not to other factors such as head injury, alcohol, or drugs).

Avoidance Symptoms

- h. Efforts to avoid distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).
- i. Efforts to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).

Arousal Symptoms

- j. Sleep disturbance (e.g., difficulty falling or staying asleep, restless sleep).
- k. Irritable behavior and angry outbursts (with little or no provocation), typically expressed as verbal or physical aggression toward people or objects.

Hypervigilance.

- l. Problems with concentration.
- m. Exaggerated startle response.

Duration of the disturbance (symptoms in Criterion B) is 3 days to 1 month after trauma exposure.

STRESS SIGNS

Listed below are frequently encountered signs of stress. Look at each list and mark appropriately how you now experience them.

How often do you experience any of the following general problems? (Score each item: NEVER=0; SELDOM=1; FREQUENTLY=2)

- | | |
|--|-------------------------------|
| _____ General irritability or depression | _____ Heart Palpitations |
| _____ Unusually dry throat or mouth | _____ Strong urge to run, cry |
| _____ Lack of concentration | _____ Loss of joy of living |
| _____ General fatigue | _____ Easily startled |
| _____ Persistently keyed up | _____ Grinding of teeth |
| _____ Can't sit still | _____ Diarrhea or |
| constipation | |
| _____ Nightmares | _____ Sleeplessness |

When you find yourself in a particularly stressful situation, how often do you experience any of the following 7 (Score each item: NEVER=0; SELDOM=1; FREQUENTLY=2)

- | | | |
|-----------------------|--------------------|---------------------|
| _____ Oily skin | _____ Hot face | _____ Tight muscles |
| _____ Need to urinate | _____ Gassiness | _____ Acid stomach |
| _____ Burping | _____ Cold hands | _____ Fearfulness |
| _____ Sweaty hands | _____ Short breath | _____ Headaches |
| _____ Pounding heart | _____ Flushed face | _____ Nausea |
| _____ Seating feet | _____ Cold feet | |

Total Score _____

VULNERABILITY TO STRESS:

- 0-14: Low
- 15-21: Moderate
- 22-28: High
- 29: Dangerously High

RESOURCES

Iowa Lawyers Assistance Program

(800) 243-1533 (515) 277-3817 (515) 360-1011 Cell (515) 255-5720 Fax
Hugh Grady, Director
help@iowalap.org

Mental Health Treatment Facilities

Clinical Assessment & Treatment Services
(515) 255-4211
4313 University Avenue, Des Moines, Iowa 50311

Eyerly Ball Community Mental Health

(515) 241-0982
945 19th Street, Des Moines, Iowa 50314
<http://eyerlyball.org/>

MECCA Services – Community-Based Substance Abuse and Behavioral Health Services

(515) 262-0349
3451 Easton Boulevard, Des Moines, Iowa 50317
<http://www.meccaservices.com>

Pine Rest Christian Mental Health

(515) 331-0303
6200 Aurora Avenue, Suite 401e, Urbandale, Iowa 50322
www.pinerest.org

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Addicted Lawyers Start as Addicted Law Students

BY MEGHAN VIVO

Lawyers are at roughly twice the risk of becoming addicted to drugs or alcohol as people in other professions. They also have higher incidence of depression, anxiety, suicide and other mental health issues than the general population. While many cite long hours, huge caseloads and the stress of the field as reasons for these problems, one judge warns that the seeds of addiction are planted long before an attorney begins practicing law.

According to Hon. Robert L. Childers, a judge in the Circuit Court of Tennessee since 1984, who has served on the ABA Commission on Lawyer Assistance Programs (CoLAP) since 1999, substance abuse and mental illness often begin in law school.

On the first day of law school, studies show that the average law student is “normal” in terms of their happiness, mental health and wellness. Within the first six months, early signs of psychiatric problems, such as depression, anxiety, hostility and paranoia, can be detected. After the first year of law school, as many as 40 percent of law students suffer from depression. Symptoms often persist through law school and into their later legal careers.

Does Legal Training Make Students Depressed?

Substance abuse and depression are prevalent on law school campuses across the country. Why? In studies, law students have reported using alcohol to “relax or relieve tension” and to “get away from problems.” Experts speculate that the following factors are also at play:

- Stress caused by excessive workloads and intense competition
- Emphasis on analysis rather than connection with morals, values or feelings
- Intimidating teaching style
- Type of individual attracted to legal profession (often overachievers or perfectionists)
- Increased access to drugs and alcohol
- Relying on academic success to build self-worth
- Loss of connection with original reasons for attending law school (such as helping people or passion for the law)
- Emphasis on image, status, affluence and impressing others, which leads to sacrifice of positive values and subsequent loss of self-esteem and personal satisfaction
- Training to ignore emotional and personal reactions and represent positions that are in opposition to their own opinions and beliefs

Many attorneys turn to drugs or alcohol because they have compromised their ethical principles and moral values. They may bend the rules to hold onto a key client or pursue “winning” at all costs. When Judge Childers speaks with law students and young lawyers, he emphasizes the importance of practicing law in a way that doesn’t go against their values. Stress turned inward, he warns, often results in health problems, depression and addiction.

“In some ways, the legal profession has become more of a business and less of a profession,” says Judge Childers. “There are lawyers who cut corners and do things that are against normal ethical or moral standards. Then when the guilt and shame build up, they try to bury those feelings with drugs or alcohol.”

Awareness & Prevention Efforts

A legal education is an honorable pursuit, but there are a few precautions law students should consider before school begins. According to Judge Childers, stress management and self-care are critical to long-term success as an attorney.

“The stress of law school continues as students graduate into young lawyers with billable hour requirements and the stress of legal practice,” says Judge Childers. “Since the stress will always be there, students can set themselves up for success by embracing a healthy lifestyle, eating a balanced diet, exercising, staying close to their faith and developing a solid social support system.”

Since addiction and mental health problems appear in law school, he says, it is during this time that education and prevention must begin.

In his role as member and past chair of CoLAP, Judge Childers has dedicated much of his career to educating law students about the risks of substance abuse and the prevalence of addiction and mental illness in the legal community. One of his goals is to teach law students to recognize the signs of addiction and seek help early on.

In support of this goal, Judge Childers helped get a rule passed in 2008 that allows impaired law students to get a conditional license to practice law if they get treatment and monitoring. Young lawyers with conditional licenses do not have to disclose to employers or clients that there are conditions on their admission to the bar. If lawyers remain sober during the conditional period, they earn an unconditional license

Judge Childers was also involved in the development of a toolkit that has been given to all ABA accredited law schools. The toolkit includes information about the signs and risk factors for addiction as well as education about lawyer assistance programs, and is designed to help law school administrators address substance abuse among students.

As a result of growing awareness surrounding law students and substance abuse, a number of law schools are instituting health and wellness programs for their students. Judge Childers and other advocates are working on law student assistance programs and other resources for this high-risk population.

Help for Law Students Struggling with Addiction & Mental Illness

Almost every state offers a lawyer assistance program (LAP) that provides advice, counseling and drug rehab referrals to legal professionals and law students struggling with substance abuse, addiction and mental illness. LAPs accept calls – in many states, seven days a week, 24 hours a day – from a variety of concerned parties. The services are free, confidential and available to law students as well as lawyers, judges and bar applicants.

There are also drug rehabilitation centers that specialize in treating law students, lawyers, judges and other professionals. These programs can assist with interventions, assessments, short- or long-term treatment, and monitoring and aftercare.

Law students and young lawyers who struggle with drug or alcohol addiction suffer significant consequences, including health problems, financial troubles and the threat of job loss. For every lawyer struggling with addiction or mental illness, there’s a family, circle of friends and a full book of clients who are also put in danger. If you or someone who know is suffering, get help today. **H**

Meghan Vivo, J.D., is a writer for Elements Behavioral Health, a network of addiction treatment programs that includes The Ranch at Piney River outside Nashville.

Lawyers Are at Risk for Secondary Traumatic Stress

By Hallie Neuman Love

This article, fourth in an occasional positive psychology series, examines what secondary trauma is and how positive psychology and body-based therapies are effective prevention and treatment approaches.

Introduction

Legal work is replete with stress. That's a given, but what is not as well understood is that secondary traumatic stress, also known as vicarious trauma or compassion fatigue, is a high occupational risk for lawyers.

Consider immigration and civil rights attorneys, public defenders, prosecutors, juvenile justice attorneys and family law attorneys (just to name a few) who are barraged on a daily basis with stories of traumatic hardship or violence. Many attorneys, day in and day out, directly observe their clients' pain, fear and terror as they listen to accounts of adversity and suffering. Many attorneys read stacks of heart wrenching reports of traumatic events, or view endless graphic evidence. The cumulative direct exposure to others' trauma can result in emotional duress to the lawyers and judges and other legal personnel who work with traumatized populations.

What is Secondary Trauma?

When lawyers are continually called on to support their clients and listen to their traumatized clients' feelings and experiences it is nearly unavoidable to not take in some emotional pain. Further, lawyers are obliged to control their reactions so they often maintain an image of toughness, or seek to appear unruffled as a stronghold of calm. They often feel a responsibility to fix their clients' trauma, conceivably by winning, even when they have no control over the outcome. Imaginably they may feel guilt when the outcome is not positive. To make matters more difficult, lawyers' high caseloads mean the exposure to trauma may never let up.



Under these conditions it's not surprising that some lawyers empathize with, internalize, and to some degree, experience their clients' feelings of fear, hopelessness, anger or rage. Secondary trauma can create within lawyers a state of psychological tension and preoccupation. Some may experience disturbing images from cases intruding into their thoughts or dreams, and they may experience intense emotions alongside these images. Another area of concern is that a lawyer, having been triggered by secondary trauma, may find him/herself re-experiencing personal past trauma memories.

Leading trauma, emotional intelligence, and resilience authorities agree that emotional residue from trauma gets lodged in the brain, body and nervous system. A brain response is the uncontrollable hair trigger for emotional hijacking. Body responses may be physical and emotional exhaustion, stomachaches, headaches, nausea, and a variety of physical illness. Nervous system responses may include feeling upset, on edge, or powerless and hopeless.

Secondary trauma can produce extreme imbalances in the autonomic nervous

system, whereby one can get stuck in a neurochemical deluge of fight, flight, freeze, or shut-down physiology. Some nervous system symptoms of secondary trauma mimic posttraumatic stress disorder. These common symptoms include: anxiety, feeling emotionally overwhelmed, depression, insomnia and other sleeping problems, concentration problems, memory problems, feeling numb, feeling agitated and prone to anger, or hypervigilant and viewing the world as inherently dangerous.

Further, attorneys may begin to question their own competence or efficacy. With lower self-esteem and PTSD-like symptoms producing problems in work and personal relationships they may further spiral downward and be at risk for self-medicating and substance abuse. And, of course, all these responses to trauma result in less productivity and less effective representation.

While it's true that secondary trauma may be nearly unavoidable in some legal fields, it's important to understand that it is a logical response to the job. It is also vital to recognize that using prevention strategies can help you cope with your feelings and

support your nervous system to mitigate this trauma.

Those that chronically endure the effects of secondary trauma without fortifying themselves against its effects or treating it may experience debilitation that forces them to stop working or leave the field of law.

How Can Lawyers Prevent Secondary Trauma?

The types of tools for resilience training offered by the science of positive psychology can help prevent secondary trauma. "Resilience Training for Lawyers" will be the focus of a companion article in the *Bar Bulletin* Positive Psychology series, available in the near future. For now, here's a brief overview of resilience:

Resilience is the process of adapting well in the face of adversity, trauma, tragedy, threats or significant sources of stress. It means, "bouncing back" from difficult experiences.

Resilience training focuses on developing awareness of thoughts, emotions, behaviors and physiological responses (usually with mindfulness training) so you can self-regulate and change those thoughts, emotions, behaviors and physiology to achieve a desired positive outcome. Other important aspects of building resilience include a strengths-based focus in order to be more engaged, overcome challenges, and create a life aligned with one's values. Resilience is also significantly enhanced when one is able to cultivate close relationships, acquire the ability to look at situations from multiple perspectives, think creatively, develop optimism, and practice mind-body techniques that keep the autonomic nervous system in balance.

To prevent the long-term, deleterious effects from secondary trauma, it is advisable to conduct periodic self-assessments to determine if you are beginning to experience depletion, and to create an effective action plan.

Here are several effective preventative elements to incorporate into your life:

- Resilience training
- Self-care such as vacations, work breaks, exercise, healthy eating, quality sleep, hobbies or activities outside work and connection with friends and family;
- Regular use of stress-reduction techniques such as yoga, meditation, mind-

fulness, breathing exercises, body sensation scans and deep nervous system relaxation to turn off the fight, flight, or freeze nervous system response;

- Wherever possible have a reduced or diverse caseload, a holistic approach to work that includes overall life quality, and the ability to debrief with others who are knowledgeable and supportive of how you think and feel and how you are affected;
- Professional assistance, when necessary, is an additional avenue to increase well-being and resilience.

Treatment

It is now well understood that trauma affects the nervous system and that residue from trauma continues to affect neurophysiology even after the traumatic event has passed. To move the absorbed trauma out of the body, trauma experts agree that body-based techniques are key strategies.

Those that chronically endure the effects of secondary trauma without... treating it may experience debilitation that forces them to stop working or leave the field of law.

Here's how trauma can get lodged in the body: people who have experienced trauma often have continued autonomic nervous system and hypothalamic-pituitary-adrenal activity from the initial trauma. This is because a traumatized individual's brain doesn't distinguish between past trauma and present peril. The brain continues to indicate danger, and individuals feel body sensations from the danger long after the initial traumatic occurrence. Some body sensations may feel frightening—for example, a knot in the belly, breath-limiting tension or heart-pounding in the chest, a constricted throat, pain or thick fog in the head, the need to fight, take flight or freeze. Individuals can also experience hypo-arousal where they numb out, shut down or dissociate. If frightening sensations aren't given time and attention to move through the body and resolve or dissolve, individuals may continue to be traumatized.

Body-based therapy provides lawyers with safe, natural tools to manage and neutralize the physiological symptoms

and body sensations related to trauma. Body-based therapies heal the fight-flight-freeze-collapse nervous system response and create a feeling of safety in the body whereby individuals can attain a calm and peaceful mind, experience emotions in a healthy way, feel a sense of strength, control and efficacy, and thereby begin to alleviate the malady.

Traditional talk therapy can help with insights, but when one digs up memories and relives the event by retelling the story, it can reignite the agony without undoing the effects of dread, anger, powerlessness, or depression contained within the body. This is one reason that individuals with PTSD-like symptoms respond well to body-based therapies coupled with psychotherapy.¹

A three-year yoga and trauma study funded by the National Institutes of Health found that participation in trauma-informed yoga significantly reduced PTSD symptoms in women with treatment-resistant complex PTSD.²

Integrative Restoration® Yoga Nidra (iRest) is a proven body-based approach used by that the military, VA centers and countless other civilian organizations to overcome trauma.³ As iRest founder Richard Miller explains, "It works directly by changing sensory, cognitive and emotional symptoms that keep PTSD in place. It's shown to bring about deep relaxation while also producing healthy changes in the structure of your brain, stimulating healing and tissue repair, providing you self-care skills for changing negative emotions and thoughts into positive ones... to restore an inner sense of ease and well-being."

What is Post Traumatic Growth?

People who endure psychological struggle following adversity often see positive growth afterward. As part of treatment for trauma, it's valuable to be aware of posttraumatic growth as a possibility. This is because if all you know is posttraumatic stress disorder and you have some horrible occurrence where you think you're going down a slippery slope, the symptoms will worsen. If instead, you understand that a typical response to trauma is resilience, that given time you may be stronger as a result of what you experienced, and that it's also possible to experience growth, the downward spiral can be stopped.

Psychologist Richard Tedeschi, professor of psychology at the University of North

Carolina, and Harvard psychologist Richard McNally, created a course taught to US Army soldiers on post-traumatic growth that begins with the wisdom that positive growth and personal transformation following trauma comes from a renewed appreciation of being alive, enhanced personal strength, acting on new possibilities, improved relationships, and spiritual deepening (“spiritual” meaning belonging to or serving something larger than the self).⁴

Conclusion

In conclusion, enhancing resilience can help prevent secondary trauma, and body-based therapies can help heal secondary trauma. It is important to take care of yourself in order to not become a victim of secondary trauma. Secondary trauma can cause debilitating

physical and emotional symptoms as well as functional impairment such as difficulty solving problems, increased

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errors, and low motivation or productivity that interferes with effective legal representation and negatively impacts the legal profession.

Remember, in order to effectively advocate for your client—you need to effectively care for yourself first. ■

Endnotes

¹ Sparrowe, Linda. *Transcending Trauma: How Yoga Heals*, YogaInternational.com, June 12, 2013.

² van der Kolk, BA¹, Stone L, West J, Rhodes A, Emerson D, Suvak M, Spinazzola J. Yoga as an adjunctive treatment for posttraumatic stress disorder: a randomized controlled trial. *J Clin Psychiatry* 2014 Jun; 75(6): 559-65

³ Miller, Richard. *The iRest Program for Healing PTSD*. New Harbinger Publications, Inc. 2015

⁴ hbr.org/2011/04/building-resilience

About the Author

Santa Fe attorney Hallie N. Love is nationally certified in positive psychology and mind-body therapies and is the co-author of *Yoga for Lawyers—Mind-Body Techniques to Feel Better all the Time*.

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