Program Description

In this presentation, Mr. Mann provides a review of the brain chemistry of addiction and alcoholism, as well as a discussion of the behavioral and health consequences of the disease. Insights are offered into the personality traits of attorneys and the qualities of the legal profession that combine to make lawyers significantly more susceptible to addiction, and more difficult to treat, than the general population. The presentation includes a case study of an addict attorney, as well as a self-diagnosis exercise for attorneys to utilize if they are concerned that they may have a problem which needs to be addressed. Concluding remarks are directed towards both systemic and individual solutions to the problem, with references to specific strategies and resources available to attorneys. Mr. Mann approaches this very serious topic in a manner that incorporates humor and irony and invites attorneys to engage in a bit of sometimes much-needed self reflection.
David Mann is a graduate of Ohio State University and Stanford Law School. He served as a Deputy Public Defender in San Francisco before becoming a solo criminal defense practitioner. After 12 years of practice, substance abuse-related issues caused him to resign from the bar with disciplinary charges pending. Following a relentless battle with addiction which included numerous hospitalizations and periods of living on the streets, he succeeded in getting clean and sober in 1998. Since then he has worked, among other things, as a cab driver, a private investigator, a paralegal, and a drug and alcohol rehabilitation counselor. He presently serves as the Northern California Consultant to The Other Bar, a statewide organization of recovering attorneys, judges, and law students. In this capacity, he spends his time providing outreach and education to the legal community, and assisting attorneys as they struggle with substance abuse and related challenges that threaten their ability and/or eligibility to practice law.
Introducing... Your Brain

The brain is the command center of your body. It weighs about three pounds, and has different centers or systems that process different kinds of information.

The brain stem is the most primitive structure at the base of your brain. The brain stem controls your heart rate, breathing, and sleeping; it does the things you never think about.

Various parts or lobes of the brain process information from your sense organs: the occipital lobe receives information from your eyes, for example. And the cerebral cortex, on top of the whole brain, is the "thinking" part of you. That's where you store and process language, math, and strategies: It's the thinking center. Buried deep within the cerebral cortex is the limbic system, which is responsible for survival: It remembers and creates an appetite for the things that keep you alive, such as good food and the company of other human beings. [1], [2]

The cerebellum is responsible for things you learn once and never have to think about, such as balance when walking or how to throw a ball.

How Does Your Brain Communicate?

The brain's job is to process information. Brain cells called neurons receive and send messages to and from other neurons. There are billions of neurons in the human brain, each with as many as a thousand threadlike branches that reach out to other neurons.

In a neuron, a message is an electrical impulse. The electrical message travels along the sending branch, or axon, of the neuron. When the message reaches the end of the axon, it causes the release of a chemical called a neurotransmitter. The chemical travels across a tiny gap, or synapse, to other neurons.

Specialized molecules called receptors on the receiving neuron pick up the chemical. The branches on the receiving end of a neuron are called dendrites. Receptors there have special shapes so they can only collect one kind of neurotransmitter.

In the dendrite, the neurotransmitter starts an electrical impulse. Its work done, the chemical is released back into the synapse. The neurotransmitter then is broken down or is reabsorbed into the sending neuron. [1], [2]

Neurons in your brain release many different neurotransmitters as you go about your day thinking, feeling, reacting, breathing, and digesting. When you learn new information or
a new skill, your brain builds more axons and dendrites first, as a tree grows roots and branches. With more branches, neurons can communicate and send their messages more efficiently. [1]

**What Do Drugs Do to the Brain?**

Some drugs work in the brain because they have a similar size and shape as natural neurotransmitters. In the brain in the right amount or dose, these drugs lock into receptors and start an unnatural chain reaction of electrical charges, causing neurons to release large amounts of their own neurotransmitter.

Some drugs lock onto the neuron and act like a pump, so the neuron releases more neurotransmitter. Other drugs block reabsorption or reuptake and cause unnatural floods of neurotransmitter. [1]

All drugs of abuse, such as nicotine, cocaine, and marijuana, primarily affect the brain’s limbic system. Scientists call this the "reward" system. Normally, the limbic system responds to pleasurable experiences by releasing the neurotransmitter dopamine, which creates feelings of pleasure.

**What Happens if Someone Keeps Using Drugs?**

Think about how you feel when something good happens—maybe your team wins a game, you’re praised for something you’ve done well, or you drink a cold lemonade on a hot day—that's your limbic system at work. Because natural pleasures in our lives are necessary for survival, the limbic system creates an appetite that drives you to seek those things.

The first time someone uses a drug of abuse, he or she experiences unnaturally intense feelings of pleasure. The limbic system is flooded with dopamine. Of course, drugs have other effects, too; a first-time smoker may also cough and feel nauseous from toxic chemicals in a tobacco or marijuana cigarette. [1]

But the brain starts changing right away as a result of the unnatural flood of neurotransmitters. Because they sense more than enough dopamine, for example, neurons begin to reduce the number of dopamine receptors. Neurons may also make less dopamine. The result is less dopamine in the brain: This is called down regulation. Because some drugs are toxic, some neurons may also die. [1] [3]
How Many Times Does Someone Have To Take a Drug To Become an Addict?

No one knows how many times a person can use a drug without changing his or her brain and becoming addicted.

A person's genetic makeup probably plays a role. But after enough doses, an addicted teen's limbic system craves the drug as it craves food, water, or friends. Drug craving is made worse because of down regulation.

Without a dose of the drug, dopamine levels in the drug abuser's brain are low. The abuser feels flat, lifeless, depressed. Without drugs, an abuser's life seems joyless. Now the abuser needs drugs just to bring dopamine levels up to normal levels. Larger amounts of the drug are needed to create a dopamine flood or high, an effect known as tolerance.

By abusing drugs, the addicted teen has changed the way his or her brain works. Drug abuse and addiction lead to long-term changes in the brain. These changes cause addicted drug users to lose the ability to control their drug use. Drug addiction is a disease. [1]

If Drug Addiction Is a Disease, Is There a Cure?

There is no cure for drug addiction, but it is a treatable disease; drug addicts can recover. Drug addiction therapy is a program of behavior change or modification that slowly retrains the brain. Like people with diabetes or heart disease, people in treatment for drug addiction learn behavioral changes and often take medications as part of their treatment regimen. [4]

References


   NIDA InfoFacts: Drug Addiction Treatment Methods
   (http://www.drugabuse.gov/infofax/treatmeth.html):
Addiction and the Legal Profession

1. Addiction – General Discussion

1.1 Magnitude of the Problem

The American Medical Association defines alcoholism and all other types of addiction as a disease. In a “perspectives” article in the journal of the American Medical Association, Brian Vastag wrote, “The brain changes during addiction.” Mr. Vastag explained that all drugs of abuse activated a pleasure pathway in the brain, the “dopamine reward circuit.” Eventually, he wrote “the dopamine circuit becomes blunted; with tolerance, a drug simply pushes the circuit back to normal, boosting the user out of depression but no longer propelling him or her toward euphoria.” With repeated use, a new state of “normal” is created, requiring continued use to feel normal. The changes in the brain, though not permanent, can be long lasting. Whether the addiction is to alcohol, illegal drugs or prescription medication, addiction is addiction, no matter what substance is being abused. An earlier view, remarkably accurate for its time, was that alcoholism is an allergy of the body coupled with an obsession of the mind. Either way, it is a problem over which the abuser has very little control.

Under any characterization, substance abuse is a serious and widespread public health problem:

- 18 million Americans are estimated to have problems with alcohol,
- 5 – 6 million people in the U.S. have problems related to drug use,
- Alcohol and drug abuse cost the American economy an estimated $276 Billion each year in lost production, health care expenditures, crime, accidents and other factors,
- Untreated alcoholism and addiction are more costly public health problems than heart disease, diabetes, cancer and AIDS - - - combined!1

The problem is no longer confined to alcohol and illegal drugs. Increasingly, people are innocently becoming addicted to widely prescribed stimulants, tranquilizers and painkillers. An April 9, 2001 issue of Newsweek has an excellent cover article on painkillers. Vicodin is one of the most widely prescribed and highly addictive painkillers.

---

1 Substance Abuse: The Nation’s Number One Health Problem; Institute for Public Health Policy, Brandeis University (Initially published in 1994 and updated 2001)
Codeine, Darvon, percodan, and the latest potent painkiller, OxyContin, are also highly addictive and being abused.

The harsh reality is that substance abuse is still present in alarming proportions, and it generates an enormous range of medical, social and criminal problems.

Statistically, the impact of substance abuse on health should, by itself, be enough to force most alcoholics and drug users to seek assistance. Drugs and alcohol are involved in 35% of psychiatric admissions, 20% of hospital admissions, account for 75% of trauma victims and 80% of the prison population, according to studies cited by the Betty Ford Professional Recovery Program.

Physically, alcoholics lose their health or their lives to a large range of devastating diseases, including:

- liver disease
- gastrointestinal bleeding
- anemia,
- pancreatitis,
- throat cancer,
- neurological disorders,
- injuries incurred from auto accidents or fights
- alcohol poisoning
- Suicide

Alcoholics have a reduced life expectancy: for men it is 48; for women it is 52, although longer life expectancy is probably a result of later onset of abuse. In fact, because of their smaller size and genetic differences, women succumb faster than men.

1.2 Addiction – Specifics within the Legal Profession

Substance abuse has always been identified with the legal profession. The stereotype of the "old drunken trial lawyer" has existed since the 18th century. Unfortunately, recent studies have confirmed a larger problem in the legal community than elsewhere.

While it is estimated that approximately 8-10% of the general population suffers from the disease of chemical dependency, according to the American Bar Association, the corresponding estimate for lawyers is nearly double, between 15-18%. Most lawyers experiences extraordinary amounts of STRESS each day, resulting from long hours, deadlines, dealing with difficult clients, judges, and colleagues. Over time, these elements of stress take their toll, often resulting in a diminished or neglected family or social life.
Substances are often used to relieve stress and can eventually become habitual. In a study done in 1990 by John Hopkins Medical School, lawyers were found to have the highest rate of clinical depression of all professions surveyed. Substance abuse often develops as an attempt to self-medicate the underlying mental health issue.

Roadblocks to recovery in the legal community include the outdated, but deeply ingrained, notion that addiction is a sign of weakness or moral failing. Lawyers and judges are held in high regard and usually maintain outside appearances. They are held to a higher standard of conduct. They are accustomed to being in control, and giving advice rather than receiving it. They are often more likely to intellectualize the problem and are fearful of disclosure, loss of respect of colleagues, loss of clients, loss of job, loss of license. But these very roadblocks are also great motivators for addressing the problem, particularly loss of family, job and/or license. In approximately 50-70% of cases in which lawyers face disciplinary charges, alcoholism and/or addiction is involved.

1.3 Substance Abuse, Addiction and the Workplace

As extensively outlined in Alcohol and the Workplace, an article by Karen Clopton in the July 2001 issue of the California Bar Journal, alcoholism is a covered disability under the Americans with Disabilities Act (ADA), the California Fair Employment and Housing Act (FEHA), and federally, under those governed by Sections 501,503 and 504 of the Rehabilitation Act 29USCA s2612 (a)(1)(D). Under the Family Medical Leave Act (FMLA), it is also deemed a serious health condition.

Not all substance abuse indicates an addiction. The difference between the substance abuser and one addicted to a substance is best described as follows. Once a person who is a substance abuser (a chronic heavy user or a periodic heavy user, one who on occasion after periods of abstinence, gets out of control for a period of time, rather than a habitual user) starts running into problems, legal, personal, professional, or medical, he/she can and will stop. If one has crossed the line into addiction, however, that person will no longer be able to predict or control their use on a consistent basis, and will continue to ingest the substance in the face of problems. It might here be noted that cocaine is the only substance that rats will take until they die. Once addiction has set in, a person loses the power of choice. Usually, a person will try to do controlled drinking or using, drinking only on weekends or switching drinks sometimes, the method of control will
work, but at other times, it won’t. Those who have become addicted never know what the outcome will be once they start. They will find themselves getting into trouble even when they started out with the best of intentions. They frequently will then suffer feelings of remorse and demoralization, anger at themselves which can then be projected onto others, often as blame.

This is because the brain has undergone changes that set up what is called the phenomenon of craving, which sets in after the first drink or hit or pill. It is an allergy of the body, an inability to metabolize the substance in the same way that a person without such an addiction can, similar to the diabetic’s metabolism of sugar. The allergy of the body is accompanied by an obsession with getting and using the desired substance.

Increasingly, studies point out a genetic predisposition to the disease. This is particularly true from male parent to sons, and especially so if both parents themselves suffer from alcoholism/addiction. In studies of adopted children, children of alcoholics have a 2-4x greater chance of developing the disease themselves, even if raised in a non-alcoholic home. Similarly, in studies of the brain, the brain waves of sons of alcoholics differ markedly from the brain waves of non-alcoholics, studied long before they had ingested alcohol. Alcoholism is a chronic disease and a progressive one. It will always get worse if untreated. There might be brief recovery, but without ongoing support, there is usually a relapse. It is a disease that tells you that there is no disease. This aspect, called denial, is a major hallmark of someone with a problem. Only 3 to 5% of those afflicted lose everything. Most have family, friends, jobs and function fairly well. However, some area of the addict or alcoholic’s life will eventually suffer: family, social, financial, or professional

The Implications of the Disease

**Personally:** marriages, family life and other social relationships suffer

**Professionally:** over time, there is a great, adverse, effect on productivity:

- poor work performance
- absenteeism
- excessive sick days
- unexplained absences especially on Mondays and Fridays
- lateness
- long lunches
- frequent breaks
not returning from lunch
• neglect of appearance: smell of alcohol, bloodshot eyes or dilated pupils
• irritability
• argumentativeness
• insubordination
• missed deadlines, court appearances or late filings
• misuse of client funds
• complaints by colleagues, client etc.,

**Symptoms of Dependency:**

1) **Tolerance**, needing more of the substance to produce the desired effect;
2) A variety of **withdrawal** symptoms, which are treated with repeated use of the substance;
3) **Increased use**, drinking or using more than planned;
4) **Craving**, an overwhelming desire to use the substance;
5) **Continued use in spite of problems**;
6) **Much time spent procuring**, hiding and obsessing about getting or using the substance;
7) Repeated failed attempts to **control** use;
8) **Isolation**, loss of interest and abandonment of many social activities.

**Three** of these symptoms over a 12 month period indicate a problem.

**Symptoms of abuse:**

1) Failure to fulfill home or workplace responsibilities.
2) Physically dangerous use, e.g., driving under the influence.
3) Legal problems;
4) Continued use in the face of legal and/or personal consequences.

**One** or more of these symptoms over a 12-month period indicates substance abuse.

**Treatment and Assistance**

The best prognosis involves a person’s honesty is admitting there is a problem, their willingness to seek or accept help, a supportive family and work environment, and continued contact with a support network. A person may be able to address the problem on his/her own with participation in a twelve-step program. These include **AA, NA, CA, MA** etc. **The Other Bar** is a non-profit, free assessment and referral service available
without cost to lawyers, judges, and law students, active or retired who need assistance with substance abuse. It is meant to be a bridge to a recovery meeting, but also has its own support meetings throughout the state. (800-222-0767; www.otherbar.org) The Other Bar also offers educational and prevention programs and is an MCLE provider. Consultants throughout the state can bring a panel to a law firm, law school, corporation, the judiciary etc. It operates a 24hr/7day support hotline (800-222-0767).

Sometimes, a combination of counseling, out-patient treatment and attendance at a support network will be sufficient. At other times, residential treatment is the best approach to treatment, coupled always with follow-up in an ongoing support meeting. If there is family involved, it is important that the family be treated as well. It is a disease that affects the whole family. They need to learn how to be supportive in a detached rather than an enabling way. The addict/alcoholic needs to face consequences. **Interventions**, done with the guidance of a trained interventionist, can often be used to successfully persuade the substance abuser that he or she needs treatment.

Professionals have been found to have a higher success rate in recovery when they recover with other professionals. They are likely to be less guarded in sharing their problem with others in their profession, who share common experiences and work environment. The shame and denial that often accompany addiction are more easily penetrated.

**The Lawyer Assistance Program**

For attorneys facing mental health disabilities, which may or may not be accompanied by substance abuse and for attorneys with discipline issues, there is the Lawyer Assistance Program (SB479) which became effective January 1, 2001. (866-436-6644)

This is a more structured program than the assistance provided by the Other Bar. It may require up to a 5 year commitment, an expenditure of funds for which financial aid may be available, random testing and meetings facilitated by a therapist. For the attorney facing discipline or experiencing mental health issues, this program is especially beneficial.

**Conclusion**

Substance abuse affects the legal profession more so than the general population. It is a threat to the public, can be fatal to the one impaired, and has disastrous
consequences to those in close personal or professional relationships with the one impaired. If you or anyone you know, personally or professionally, needs help, there is help and hope. Get help for yourself. Attend **Alanon** meetings and learn how to take care of yourself and not enable the substance abuser. Enlist the assistance of the Lawyer Assistance Program and the Other Bar. Consider an intervention. But do not ignore the problem. Urge the addict/alcoholic to seek help. You may save a life or a license.

---

**Signs & Symptoms of Chemical Dependency**  
(With thanks to the Florida Lawyers Assistance, Inc.)

<table>
<thead>
<tr>
<th>Family</th>
<th>Physical</th>
<th>Community</th>
<th>Office</th>
<th>Professional</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withdrawal from family and pleasurable activities</td>
<td>Multiple complaints</td>
<td>Decrease participation in community affairs</td>
<td>Disorganized appointment schedule</td>
<td>Inappropriate behavior or moods</td>
</tr>
<tr>
<td>Frequent absences</td>
<td>Increased use of prescription medication</td>
<td>Change of friends, acquaintances</td>
<td>Hostile behavior to staff and clients</td>
<td>Decreasing quality of performance</td>
</tr>
<tr>
<td>Frequent arguments; child/spousal abuse</td>
<td>Increased hospitalizations</td>
<td>Drunk &amp; disorderly incidents, public intoxication, DWI arrests</td>
<td>&quot;Locked door&quot; syndrome (drinking or using at work)</td>
<td>Inappropriate pleadings, decisions</td>
</tr>
<tr>
<td>Family members display codependent behaviors</td>
<td>Frequent visits to physicians, dentists, medical professionals</td>
<td>Leaders in community lose confidence</td>
<td>Borrowing money from partners, associates or staff</td>
<td>Partners, associates, staff notice changes in behavior</td>
</tr>
<tr>
<td>Children engage in abnormal, antisocial, or illegal activities</td>
<td>Personal hygiene, dress, and appearance deteriorate</td>
<td>Marked change in participation in weekly routines – including religious and volunteer participation.</td>
<td>Frequently absent, sick or missing from work</td>
<td>Client complaints, disciplinary issues and malpractice suits</td>
</tr>
<tr>
<td>Sexual problems (impotence, affair)</td>
<td>Accidents, trauma, ER visits</td>
<td>Sexual promiscuity</td>
<td>Clients openly complain to partners, associates, staff</td>
<td>Missed hearings, appointments, depositions</td>
</tr>
<tr>
<td>Separation or divorce (initiated by spouse)</td>
<td>Serious emotional crisis</td>
<td>Isolation from support systems, friends and family</td>
<td>Increasing unexplained absences</td>
<td>Loss of clients, practice, unemployment</td>
</tr>
</tbody>
</table>
DOS and DON’TS:
FOR THE FAMILIES, FRIENDS, AND CO-WORKERS
OF ALCOHOLICS AND OTHER DRUG DEPENDENT PEOPLE

DO talk to someone who understands the disease of alcoholism and other drug addiction.
DO learn the facts about chemical dependency
DO develop an attitude to match the facts
DO go to Al-anon and/or seek professional help.
DO learn about yourself, your needs, desires, reactions and behavior patterns.
DO maintain a healthy and consistent atmosphere in your home or workplace as much as possible.
DO take care of your needs and let the addicted person take care of his/her needs.
DO share your knowledge with others.
DO be committed to your own growth, health, and life goals – be constructively selfish.

DON’T preach and lecture to the person addicted to alcohol or other drugs
DON’T make excuses for the chemically dependent person.
DON’T rescue – let them clear up his or her own mistakes and assume the responsibility for the consequences of his or her drinking behavior
DON’T make threats you won’t carry out.
DON’T believe that you are the cause of the other person’s alcoholism or drug dependency.
DON’T suffer for the chemically dependent person.
DON’T protect the chemically dependent person from alcohol or drinking situations whether he or she is drinking or in a program of recovery.

Adapted from information provided by: The National Council on Alcoholism and Other Drug Dependencies – Bay Area’s.
A Self-Test: Use this questionnaire to assess alcohol and/or chemical dependency problems

1. Are my associates, clients, or support personnel alleging that my drinking/drug use is interfering with my work?
2. Do I plan my office routine around my drinking/drug use?
3. Am I fooling myself into believing that my drinking at business lunches is really necessary?
4. Do I ever feel I need a drink/drug to face certain situations?
5. Do I drink/use drugs alone?
6. Because of my drinking/drug use has I ever had a loss of memory when I was apparently conscious and functioning?
7. Has my ambition or efficiency decreased since I began drinking/drugging?
8. Do I ever drink/drug before meetings or court appearances to calm my nerves, gain courage, or improve performance?
9. Do I want, or take, a drink/drug the next morning?
10. Have I missed or adjourned closings, court appearances or other appointments because of my drinking/drug use?
11. Because of my drinking/using drugs, have I ever felt any of the following: fear, remorse, guilt, real loneliness, depression, severe anxiety, terror, or a feeling of impending doom?
12. Is drinking/drug use making me careless of my family's welfare or other personal responsibilities?
13. Does my drinking/drug use lead me to questionable environments or acquaintances?
14. Do I really "need" a drink/drug to steady my nerves?
15. Have I ever neglected my office administration or misused funds because of my drinking/drug use?
16. Am I becoming increasingly reluctant to face my clients and colleagues in order to hide my drinking/drug use?
17. Have I ever had the shakes, the sweats, or hallucinations as the result of my drinking/ drug use?
18. Do I lie to hide the amount I am drinking or using drugs?
19. Could my occasional or frequent disturbed or fitful sleeping be the result of my drinking/ drug use?
20. Have I ever been hospitalized or treated by a doctor directly or indirectly as a result of my drinking/drug use?

IF I HAVE ANSWERED YES TO ONE OR MORE OF THE ABOVE QUESTIONS, IT IS TIME TO SEEK HELP. You do not have to manage it alone. Don’t put off calling while you are trying to decide whether things are bad enough. You do not have to lose your license, reputation or family before reaching out for assistance.
How Can a Firm or Corporation Deal with the Issue of a Partner or Employee who is abusing Substances?

Promptly—Addiction is a disease that gets worse, never better. It is important for the firm as well as the individual involved to break through DENIAL and address the problem.

Firmly—Set boundaries, conditions for the individual in the workplace. INTERVENTION???
The addict senses when and where there is wiggle room, and often will not get help without an ultimatum. They may be in their own denial.

Openly—With discretion, of course, and respecting privacy and Employment law issues, but do not feed paranoia. Focus directly on the substance abuse affects work quality and performance. Be specific. Share with the others on a “need to know” basis.

Employment Law Issues turn on the status of the relationship, whether employee or partner. Some criteria:

- Power to hire/fire
- Right to supervise

If an employee, issues of Discrimination (ADA, Family Medical Leave Act (if more than 50 people), Privacy of medical records, Defamation arise, one is required to respect confidentiality, and make accommodation, and not discriminate.

If a partner, issues of Fiduciary Duty apply.

- Establish and maintain institutional standards so that behavioral and performance problems are identified at an early opportunity.
- Identify specific performance or behavioral problems such as erratic work hours, substandard performance, and observations of intoxication or impairment, unacceptable or unprofessional behavior.
- Confront the lawyer with factual information and observations, and provide an opportunity for explanation or a request for assistance.
- If appropriate, request an evaluation by a healthcare professional to determine whether there is a medical problem and, if so, what course of treatment is recommended.
- Impose appropriate requirements, including a “last chance” or “return to work” agreement.
LAST CHANCE AGREEMENTS

In business, employers generally require employees returning from treatment to execute a “last chance agreement” or “return to work agreement.” These agreements can be a constructive part of recovery. They provide job-related motivation and outline job-related responsibilities which relate to treatment and recovery. Although they vary from workplace to workplace, most include the following elements:

- Verification that the employee is participating in a treatment program (be careful not to require too much information);
- A commitment to remain drug and alcohol free;
- An acknowledgement that the lawyer is committed to adhere to requisite standards of behavior;
- Drug or alcohol testing if appropriate (be careful to avoid random alcohol testing for employees);
- A commitment to participate fully in recommended aftercare, 12-step meetings, or other therapy recommended by treatment counselors;
- An acknowledgement that a violation of the agreement, or its incorporated standards, will result in immediate termination; and
- Authorization to talk to treatment counselors to obtain information about compliance with treatment requirements, aftercare conditions, and to get advice about the return to work, all limited to a need to know basis and carefully drafted to protect medical privacy.

“Last chance” or “return to work” agreements are appropriate for the lawyer too; however the type of agreement might vary with the lawyer’s status. Partners and shareholders who have ownership interests may work under agreements that spell out rights and responsibilities that leave little room for a mandatory extra agreement such as a last chance agreement. That may leave the firm with little leverage beyond a beyond a motion to expel the lawyer or break up the firm. But don’t overlook the value of negotiation too. You may be able to work out a perfectly satisfactory return to work agreement which protects organizational interests and, in exchange, offers practice-related assistance upon return.

*Before requiring a commitment to remain alcohol free, check with developing interpretations of the Americans with Disabilities Act. While current use of illegal drugs is not protected under the law, alcoholism is as long as it does not have a negative effect on the business operations. That may lead to a tension between the need to abstain from alcohol for purposes of treatment and recovery, and the employer’s insufficient interest in monitoring off-the-job drinking habits. We don’t yet know where the line lies.*
SAMPLE: TREATMENT AND RETURN TO WORK AGREEMENT
By signing this agreement I accept and agree to the following terms and conditions which will govern my continued employment with and my return to work with [firm].

I. TREATMENT

1. I acknowledge that my work performance and/or behavior have resulted in the need for intervention and have provided a basis for the termination of my employment (or: define nature of relationship) with the firm. As a consequence, and in order to avoid the termination of my employment (expulsion from the firm), I voluntarily accept the terms of this agreement.

2. I agree to submit to an immediate evaluation by a health care professional of the firm’s selection.

3. I will follow all treatment recommendations of that professional including without limitation entry into a residential treatment program.

4. I understand that I am responsible for all costs associated with the treatment program to the extent they are not covered by insurance.

5. I will authorize regular progress reports to be made to the firm during treatment (tailor to specific consent).

II. RETURN TO WORK

1. Upon completion of the recommended treatment program I understand that the firm will return me to employment.

2. Upon my return, I will review all aftercare requirements and recommendations with my supervisor (on a need to know basis).

3. I understand and acknowledge that my return to work will be conditioned upon my strict compliance with the following:

   (a) Strict compliance with the treatment recommendations made by the treatment professionals with whom I have been working. Upon completion of my treatment program, a summary of those recommendations will be prepared and attached as Exhibit A to this agreement, and I will re-execute it at that time (tailor consistent with medical authorization);

   (b) Complete abstention from all mood-altering substances except in strict accordance with the written authorization of a licensed physician who has been advised in advance of my treatment for substance abuse and who has reviewed any such prescription in advance with my substance abuse counselors (tailor to address off-duty alcohol use);

   (c) Regular attendance at required or recommended 12-step programs.

4. For a period of two years from the date of my return to work, I agree to submit to testing to detect the presence or use of drugs (or alcohol if appropriate), on any basis including random or unannounced, and at the times and on the terms that are communicated to me by [insert authorized person or entity]. I understand that at the conclusion of the two year period the company, in its sole discretion, may extend the period during which I will submit to drug testing for an additional year.

   (Use caution in defining alcohol testing to avoid ADA problems)

5. I understand and acknowledge that I continue to be bound by and must adhere to all standards of professionalism, behavior and performance that are required of attorneys with the firm as they may exist from time to time, including but not limited to those set out in the firm’s policy and procedure manual.

6. This agreement does not guarantee my employment or compensation for any period of time, nor does it in any way alter my status [as an at will employee]. I understand and acknowledge that strict adherence to
these terms and conditions are a requirement of my continued employment with the firm and that any violation of the terms of this agreement (including its incorporated standards) will result in my immediate termination. By my signature below I confirm that I have reviewed and considered these terms and accept them voluntarily as a constructive part of my recovery. I also acknowledge that these terms are being provided to me as an alternate to the termination of my employment. I understand that I may withdraw my consent at any time during the term of this agreement, but acknowledge that withdrawing my consent is a voluntary termination of my employment (consent to my expulsion from the firm).

Signature # 1 (at the time of intervention):

________________________________________

Signature # 2 (upon return to work, and incorporating aftercare recommendations)

________________________________________
A common source of ethical insensitivity is a legalistic attitude toward ethics that says that if an action is legal or within some set of “rules,” then it’s acceptable and therefore ethical. The prevalence of this notion explains why so many people accused of wrongdoing hide behind technical interpretations of the law. They boast that they were not indicted or convicted, as if clears them of any charges of ethical impropriety.

The error in this approach is the assumption that legal standards are as all-encompassing as ethical principles. Although law abidance is surely an aspect of one’s ethical obligation to be a responsible citizen, it is important to remember that laws and rules establish only minimal standards of propriety. They tell us what we will be punished for doing; they do not describe what an ethical person ought to do.

Many company ethics programs are called “compliance” programs because they focus on the employee’s duty to comply with laws and organizational codes. In most cases, this produces a “do only what you have to do to stay out of trouble” mentality, which disregards the ethical implications of the conduct and treats standards of conduct as mere obstacles to be overcome or avoided. Compliance is about what I must do; ethics is about what I should do. When companies make compliance their ultimate goal they create a minimalist conception of obeying the strict letter of the law. Soon, doing what they can get away with becomes the goal.

One can be dishonest, unprincipled, untrustworthy, unfair, and uncaring without breaking the law. Ethical people and companies measure their conduct by their adherence to core ethical values rather than to laws and rules; they do not walk the line of propriety. Ethical people often do more than they have to do and less than they are allowed to do. The area of discretion between the legal “must” and the moral “should” presents challenges to our ethical consciousness. That is why there is a difference between what we have a right to do and what is right to do.
Attorneys: Alcoholics and Addicts? Yes.

David Mann
Northern California Consultant

The Other Bar

The Problem

Substance abuse has always been identified with the legal profession. The stereotype of the “old drunken trial lawyer” has existed since the 18th century. Unfortunately, recent revelations have confirmed the validity of this stereotype.

Those who study and claim to know about such things tell us that there is an unusually high incidence of alcoholism and drug addiction in the legal profession. It is estimated that approximately 8-10% of the general population suffers from the disease of chemical dependency. According to the American Bar Association, the corresponding estimate for lawyers is nearly double, between 15-18%. (In approximately 50-70% of cases in which lawyers face disciplinary charges, alcoholism and/or addiction is involved.)

This should come as no surprise. We attorneys tend to be highly competitive, driven overachievers by nature. That’s what gets us into and out of law school in the first place. Once in practice, we come under close scrutiny, in both our professional and private lives. We handle matters that are of ultimate consequence to our clients. They count on us to be competent, hard working, ethical, and effective. Our rather handsome rate of compensation increases the pressure to perform. The adversarial system pushes us to win at any cost, with a legal defeat carrying the onus of failure. Cutthroat competition for partnership positions at good firms rewards workaholism. Or, the pressure to keep a small firm or solo practice afloat demands the simultaneous juggling of so many tasks as to induce panic attacks. The combined effect of these and other factors is to produce physical and mental health-challenged human beings.

Enter the medication. Alcohol and drugs provide quick relief from stress, assistance in sleeping, a needed energy boost, false confidence, or temporary escape from it all, as the case may be. Although not ideal from a health perspective (all substances have deleterious side effects) self-medication might be an acceptable survival strategy were it not for some unfortunate realities of brain chemistry: tolerance, dependence, habituation and addiction. Tolerance occurs when the brain and body adjust to the substance, requiring more and more to achieve the same desired result. Likewise, dependence develops because soon the substance is required in some quantity just for the user to function and feel normal. These phenomena combine to create habituation, or regular, repeated use. Habituation over time becomes full-blown addiction: the state where the user craves the substance, can no longer control his or her intake, and continues to use in spite of adverse consequences.

So, predictably, a certain percentage of attorneys end up in trouble. At that point, we face the same dilemma all alcoholics and addicts face: we must become willing to admit we have a problem and ask for help. The obstacle is that, as attorneys, we are peculiarly constructed so as to find this surrender nearly impossible. The legal profession and addiction psychology are, perversely, the only two areas of human endeavor where the word “denial” is a term of art. We file denials to complaints, go to court to formally deny a myriad of allegations, and respond to requests for admission with denials. Why would any self-respecting attorney admit anything, unless under extreme duress, especially that he or she is an alcoholic or addict who needs help? And so it frequently doesn’t happen, until it is way later and things are far worse than they needed to be. Some examples:

“Still in Charge”

A classic “high bottom” alcoholic, Jim was the managing partner in a successful medium-size San Francisco law firm specializing in complex business litigation. Until he was in his fifties, drinking was a non-issue: wine at dinner, a cocktail at a party, or a beer at a ballgame. He began drinking vodka as a sedative at night in response to stress-induced insomnia. Eventually his consumption increased and began to include daytime drinking. Jim now recalls himself as a “stealth drinker”, who never suffered any of the classic visible alcoholic experiences: no public displays of bad behavior, passing out, fights, or DUI arrests. He did however, begin to have trouble remembering things, causing himself embarrassment. (For example, writing and sending a series of threatening letters to the IRS angrily demanding his refund, although he had already received, cashed and deposited the check, a fact proven to him when he was sent a copy of said check bearing his signature
and bank deposit information.) There were other “disturbing” occurrences, such as falling down in public and splitting his pants, and being unable to find his car in a parking garage. His work was largely unaffected. Although people at his firm were concerned for his well-being, his status as managing partner prevented anyone from confronting him, for fear of reprisal. Ultimately, several partners contacted The Other Bar, which helped to organize an intervention resulting in Jim going to rehab. After a period of failed experimentation with moderation, Jim realized that total abstinence was the only solution, and he succeeded in getting and staying sober.

“Nobody Knows”

Mike had always been popular, academically successful, athletic, and a self-described “party guy”. Rock concerts, drinking and drugs were part of his lifestyle, balanced by long distance running, and a “normal” family life (i.e., a wife, two sons, and a mortgage). He had a career as an accomplished litigator, first as an associate at a prestigious firm, and then as one of two partners at a thriving boutique practice. He considered himself invincible, someone who could do and have it all. By his late thirties, weekend cocaine use had escalated to a habit of staying alone at the office “working late”, while ingesting ever larger amounts of cocaine and-top shelf tequila. Mike believed that he was fooling his wife, his kids, and everyone else. He was less and less able to fool himself, though, privately suffering and worrying more and more about his physical and mental health. He describes his substance abuse strategy as follows: After calling home to serve notice that he, once again, had to “work late”, he would snort cocaine and drink all night, waiting until the sun was almost up before driving home against the rush hour traffic, in order to avoid being on the road during the prime hours when the CHP was cruising, looking to arrest people like him. Once home, he would quietly slip into bed next to his wife, a heavy sleeper, wait a short while, then get up, shower, and return to work, pretending he had spent most of the night at home asleep. He was convincing himself that this strategy was effective, until one morning he looked up to see the innocent face of his four-year-old son staring at him with a pained expression. His son said simply: “Real daddies come home at night”, turned, and left the room. Later that day, Mike took steps to begin the process of becoming clean and sober.

“Not Dead Yet”

David, also a “party guy”, started taking amphetamines in the form of diet pills as a study aid in college during the seventies. He used amphetamines in various forms to achieve great academic success, graduate from a top-tier law school, and pass the bar exam. He went on to a solid career as a public defender and solo criminal defense practitioner. Ultimately, after 15 years of “successful” drug use, David’s habit escalated into intravenous methamphetamine addiction. Within three years he was disbarred, a convicted felon, and homeless on the streets of San Francisco. Only after 18 months of abject misery and deprivation did he reach his bottom. He woke up one morning in a playground, being prodded by children and mothers attempting to determine if he was alive. Forty years old, six feet tall and 130 pounds, penniless, nearly suicidal, and totally disconnected from family, friends, and society, David finally went into treatment, lured at first simply by the promise of a bed, some food, and a hot shower. He has remained clean and sober ever since.

The Solution

As these stories indicate, substance abuse comes in many guises, and we make assumptions, generalizations, or excuses at our peril. One thing remains true in every case however: no addict or alcoholic can get better unless and until he or she admits there is a problem, asks for help, and becomes willing to do what is necessary - frequently outpatient or residential treatment, but at minimum, ongoing participation in a structured program of recovery. Roadblocks to recovery in the legal community include the outdated but deeply ingrained notion that addiction is a sign of weakness or moral failing. Lawyers and judges are held in high regard and usually maintain outside appearances. They are held to a high standard of conduct. They are accustomed to being in control, and giving advice rather than receiving it. They are often more likely to intellectualize the problem and are fearful of disclosure, loss of respect of colleagues, loss of clients, loss of job, loss of license.

Typically, the admission and the cry for help occur when the alcoholic or addict has finally overcome his
or her resistance to attending a twelve-step meeting. It is extremely difficult for most people to do this, but attorneys, with their inflated egos, overactive intellects, concern for their professional reputation, and consummate skill at denial, seem to be particularly stubborn about refusing to go to that crucial first meeting. This is where the Other Bar comes in.

The Other Bar is a voluntary recovery organization for those in the legal profession. It has been in existence for over twenty-five years and has hundreds of members statewide. They are from all walks of the profession, and include judges, prosecutors, defense attorneys, large firm partners and solo practitioners. The Other Bar’s purpose is to provide strength and support to attorneys who are recovering from problems with alcoholism, drug abuse, or other addictions. To this end the organization conducts regular AA-type meetings in dozens of cities and towns across California. The Other Bar also provides education and outreach in the form of Continuing Legal Education Seminars.

The unique effectiveness of the Other Bar lies in its ability to lure the reluctant or fearful attorney alcoholic or addict into his first twelve-step meeting, thus providing him with access to recovery. Over the years I have been affiliated with The Other Bar I have heard countless stories where the pivotal surrender and beginning of recovery came as a result of attending an Other Bar meeting, which had been described to the unsuspecting initiate in some suitably palatable terms, such as “support group for lawyers,” or: “a professional group where we discuss our problems.” This starts the process, and often careers and lives are saved.

More information is available at TheOtherBar.org, or by calling the toll-free hotline at 1.800.222.0767.