



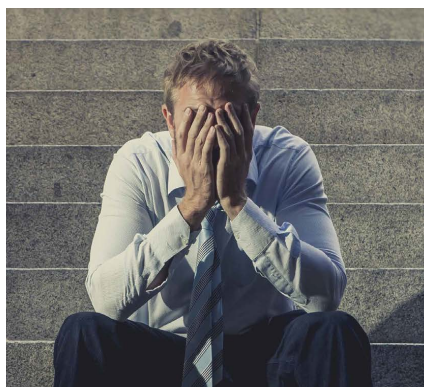
# Confronting Addiction in the Law Firm

*A recent study reveals the extent of substance abuse and mental health concerns within the legal profession. Here's what you can do about it.*

## The Study Explained

Although it's been commonly accepted knowledge for decades that attorneys have a high rate of alcoholism, little data and research had been generated since the 1990s. The research conducted at that time was limited in scope, but it did conclude that lawyers had approximately twice the rate of alcoholism and at least three times the rate of depression than the general population. The authors of those findings called for additional research about the extent of alcoholism and depression among practicing U.S. attorneys; however, until now, none had been forthcoming.<sup>1</sup>

In 2014, Hazelden Betty Ford (HBF) and the American Bar Association (ABA) Commission on Lawyer Assistance Programs funded and initiated an evidence-based study to ascertain rates of substance abuse and other mental health concerns among attorneys, the prevalence of these concerns among licensed attorneys, their utilization of treatment services, and what barriers existed between them and the services they may need. The study was published in *The Journal of Addiction Medicine* in the January/February 2016 issue.<sup>2</sup>



A total of 12,825 licensed, employed attorneys from 19 states returned a number of questionnaires specific to alcohol use, drug abuse, depression, anxiety and stress. All of them completed the Alcohol Use Disorders Identification Test (AUDIT). The first three questions of that test are objective questions that concern how much and how often an individual drinks. The remaining seven questions are more subjective and

address whether the individual has failed — as a result of drinking — to meet individual expectations, caused any injury, had periods of drinking more than intended, has needed a drink in the morning to function, has failed to remember a specific drinking episode, has felt guilty about drinking, or had friends or family express concern about alcohol use. Based on the answers to the first three questions alone, an astounding 36.4 percent of the responding attorneys could be characterized as hazardous drinkers — more than 3.5 out of every 10. In a similar test given to doctors, only 15 percent who answered the first three questions were characterized in such a manner.

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When all 10 questions are considered, 20.6 percent of all the attorneys were still determined to be problem, potentially dependent drinkers. Significantly, this compares to a rate of 11.8 percent for a broad, highly educated workforce screened with the same measure.

Not enough attorneys responded to the drug-use questionnaire to permit any scientific conclusions in that respect. However, this is meaningful because the anecdotal knowledge of the profession underscores systemic use of opioids, sedatives and stimulants, often in conjunction with alcohol. These either constitute separate instances of addicted impairment or, when used with alcohol, dangerous and medically counter-indicated use.

Attorneys were found to have a greatly heightened rate of depression (26 percent) — about four times the national average — and high rates of stress (23 percent) and anxiety (19 percent). It is also interesting to note that 46 percent of all the responding lawyers reported that they had experienced significant depression issues at some point in their careers. Likewise, 61 percent revealed experiencing high levels of anxiety at some career juncture.

The most profound impact of this study is that it reveals why attorneys will not ask for help and treat their conditions, while highlighting the actual numbers of lawyers hiding, in pain and isolation, behind the curtain. The two common barriers to treatment reported by the respondents were 1) not wanting others to find out they needed help, and 2) concerns regarding privacy and confidentiality.

In addition, employees of law firms are competitive, concerned for their reputations, and used to being the problem-solvers. They do not want to show weakness, and they tend to have strong egos. Add this to the overall “normalized” drinking culture of law firms — from client dinners to retreats to bar events — and a toxic breeding ground emerges.

## UNDERSTANDING ADDICTION

In order to understand the study and the behavior of impaired peers in a law firm, it is essential to know what addiction is and how it is typically manifested in that environment. An understanding of this misunderstood disease is also critical to make necessary changes in firm culture and to appropriately confront the attendant stigma, behaviors and dangers.

Addiction is a primary, chronic and progressive disease of the brain’s reward, motivation, memory and related circuitry. It causes compulsive alcohol or drug-seeking and



use, despite harmful consequences to the addict and those in proximity. Over time, the brain continues to change, and self-control and the ability to resist substances is further eroded. Genetics and biology are now understood to account for at least 50 percent of the cause, with factors such as environment, development and mental health playing additional roles.<sup>4</sup>

Although addiction is a chronic disease in a class with others such as cancer, diabetes and hypertension, its symptoms manifest as behavioral in contrast to the more objective symptoms of those other conditions (often identified through blood work, X-rays, biopsies, etc.). The behaviors associated with addiction also tend to be negative and antisocial, further complicating not only the diagnosis but the perception of peers. It is not uncommon for both the addict and his or her family and friends to moralize when these symptoms appear, and feel frustration and contempt due to a perceived “lack of willpower” or a loss of moral direction.

The brain of the addict is often referred to as having been “hijacked,”<sup>5</sup> and the result is often systematic denial of any problem by the addict and the creation of a “private logic” telling the addict that everything is fine. Often this presents with addicts comparing themselves to others at a more advanced stage and believing they are not a “real addict,” or blaming their drinking on other factors, such as: “You would drink too if...”

A simple example is a cancer diagnosis. People are told by the doctor what the test results were, begin treatment, and have the support of family, friends and perhaps even a CaringBridge. In contrast, alcoholics who finally begin treatment (if they even do) have often angered their family, employer and friends, and are virtually alone and isolated. During a speech, I once asked all 200 patients at Hazelden Betty Ford if any of them had a CaringBridge for their condition. The audience was silent.

Addiction cannot be cured, but it can be successfully treated, typically with the assistance of professional help or support organizations.<sup>6</sup>

Clinical resources can range from residential treatment to outpatient groups and sober houses. Support groups can include abstinence-based programs such as Alcoholics Anonymous, less spiritually based organizations, and harm-reduction frameworks. When alcoholics accept treatment, they are said to be in recovery — the process of change through which an individual achieves abstinence and improved health, wellness and quality of life. As with other chronic diseases, it is essential to receive help and support from others, make fundamental lifestyle changes and alter many core values.

The first year of recovery is the most demanding for the addict. Often, he or she must make accommodations in career or life in order to make recovery the first priority. This is why the treatment of the disease and the return to work — or the continuation of work while now sober — is often key to building a foundation of sustained recovery.

Alcoholics are told that in their first year of abstinence their recovery must come first, above anything else. Relapse during that year is not uncommon, but it does not indicate that things are hopeless. Rather, it is a message that the addict must get back on track with treatment and recovery resources. The same is true with all chronic diseases, where only 50 to 60 percent of patients typically comply with their treatment protocol.<sup>7</sup>

If the law firm can support its employee in recovery, the benefits can be breathtaking. Not only will the employee no longer be performing at a diminished and erratic rate, but also they can become better than ever. It is likely that this employee's attention and judgment has been compromised for some time, and it can be exhilarating for both the impaired individual as well as the firm to heal cognitively and physically and return to the level of competence for which they were hired.

### **THE ALCOHOLIC IN THE LAW FIRM**

This study tells us about the stark reality of impairment and mental health discord behind the closed doors of our law offices. But as discussed earlier, the attorney or staff member will often conceal or deny any problem, even in the face of overwhelming evidence to the contrary. How can you identify somebody at your firm (including yourself) with a problem? And what does a “high-functioning” alcoholic look like? Why are they often invisible to their colleagues?

Numerous warning signs are consistent with an impaired employee who has a drinking problem. Before listing many of these typical signs, a word of caution: Many of these can be due to reasons besides a substance use issue. They can be due to mental health issues, situational life matters (divorce, money problems, family situation), physical challenges and various other reasons. It is important not to “diagnose” any particular situation, but to help yourself or another by addressing the matter openly, and then, if appropriate, seeking expert consultation or assessment.

The goal is simply for you and your coworkers to be healthy and productive and to provide (or access) support to help treat the temporary or chronic condition. The key is that further consequences and damage — to all concerned — do not occur, and that the individual can begin to get better and heal. If you or the individual refuse to be treated accordingly, then at least

Some specific possible warning signs of a drinking problem at the firm:

1. Isolation
2. Change in regular patterns
3. Disappearing at unexpected times
4. Lots of excuses for unexplained issues
5. Change in physical appearance
6. Significant weight gain or loss
7. Red eyes
8. Lots of breath mints or mouthwash
9. Becoming defensive when not appropriate
10. Change in behavior — advent of fast talking, loud talking, loud laughter, extended periods of silence
11. Mood swings
12. Lateness
13. Decrease in productivity
14. Confused thinking
15. Forgetfulness
16. Being tired all the time
17. Looking tired
18. Extended breaks, lunches
19. Leaving early, working from home
20. Strained relationships with coworkers
21. Increased irritation
22. Borrowing money
23. Unplanned “emergencies”
24. Missed deadlines
25. Unsteady gait
26. Strange breath; smell of alcohol or something different
27. Lack of concentration
28. Misses work on Mondays or leaves early on Fridays
29. Avoids interactions
30. Door that was always open is now always closed
31. Inappropriate episodes of sweating
32. Unexplained bruises, injuries

the law firm has assisted to the extent possible. Decisions can then be made as to the current and anticipate job performance.

But what if the addicted staff member is a high-functioning alcoholic and does not change routine or behavior? Up to 50 percent of all alcoholics are described in this manner, and lawyers and those in a law firm are especially skilled at concealing and manipulating the reality of their lives. Those individuals are adept at hiding their addiction and presenting as fully functional people for up to decades, while secretly engaging in addictive behavior.

In fact, lawyers in particular will hold onto their careers for dear life because often it is how they identify themselves — addiction often takes away family, friends and health before the surrender of the career.

Because the disease is progressive, “hiding” it is not sustainable. Often the worst consequences and damage are suffered at this moment. Further, by that point, the individual has often reached a pinnacle of authority and autonomy that permits even greater isolation and less accountability — and enhanced danger to all involved, including the law firm.

I have gathered together a list of certain traits of a highfunctioning alcoholic that may be helpful in viewing yourself or others at the firm:

- Does not appear as prototypical stereotype
- Has very high tolerance and seldom, if ever, appears intoxicated
- Drinks expensive wines or liquors
- Shows up for work, has a family, fulfills obligations
- Does not drink more than others at public functions but privately drinks to excess — often before and after such functions
- Still looks terrific
- Overachiever in most areas and uses this skill set to sell others that there is not a problem
- Often very successful
- Able to compartmentalize easily
- Has tried to quit (privately) on numerous occasions, but has never succeeded
- Has not had a driving under the influence (DUI) infraction, been arrested, exhibited inappropriate behavior, engaged in any public display or shown significant obvious physical infirmity
- Often can work alone without accountability to others
- Blends into a firm culture of drinking and a “work hard, play hard” mentality
- Always finishes a drink
- Secretly craves and obsesses over use and next drinking opportunity, but does not verbalize this to others

Once again, this is not an invitation to play Sherlock Holmes, but rather to gain some insight into how this powerful brain disease can transform the best of us into strangers. We try to hide the disease because we are more afraid of the stigma than we are of the disease itself (and its eventual fatal progression). This, of course, is not logical, but explains both the mystery and power of addiction.

### **HOW TO CONFRONT ADDICTION IN A LAW FIRM**

What do you do if you believe a colleague is impaired to the point where the work product and behavior are negatively affected? This person may not even drink at work or during the day, but it is clear to you that their drinking (or drug use) has compromised their professional performance.

If there is not a crisis, you may wish to approach the individual in a relaxed and compassionate manner and express concern, or ask questions. Based on the response, you can consider the next step. Remember, you are not diagnosing — only trying to ascertain if the behavior is temporary and being appropriately treated, or, if more serious, that resources can be accessed to address the issue. Your law firm might consider putting a series of protocols into place that make it safe and comfortable for you or the impaired individual to confront the situation and receive expert assistance. The firm may wish to consult ahead of time with any variety of experts: human resources, the employee assistance program (EAP), interventionists, treatment centers, recovery coaches, addictionologists, detoxification facilities, therapists or other counsel. Ethical rules and responsibilities may come into play, and counsel should be consulted.

The only thing you can do wrong is to do nothing at all. Ignoring the situation only permits the individual’s disease to worsen and assures far more damage to the individual, the family, the law firm, the client and your professional standing.

This is an entirely different matter than detecting an issue with a friend or relative: In this case, you are the professional peer of the impaired person, with fiduciary duties to your firm and client and ethical obligations to your profession. On a personal note, this is your colleague, often your friend, and whether your firm is 6 employees or 600, a member of your team.

A couple of other observations: First, do not enable or hide anything in order to assist the impaired individual in covering up any matter. This is likely an ethical violation, and it is certainly a clinical misstep. Alcoholics will only get worse if their behavior is enabled (there are hundreds of books about this codependency). Second, do not gossip about situations such as these. As a member of law firms for more than 20 years, I am not naïve about the steady flow

of juicy gossip in any firm. However, this is truly a matter of life and death, and there can be unintended consequences of such gossip that are unpredictable.

Finally, if there is an actual crisis in the workplace with the impaired lawyer or staff member — in the office, in court or with a client while under the influence — it is helpful to have a basic emergency template to guide the firm in how to proceed. The same is true for fire or weather or health emergencies, and should be in place for these types of matters. A few suggestions as to content:

- Get the employee to a safe and secure place.
- Have at least two people present.
- Make sure the individual is mentally, physically and psychologically safe — utilize professionals at this point who are part of this protocol.
- Know who to involve and notify at this point and to whom to release any information about this event.
- Make sure confidentiality remains paramount.
- Document everything.
- Have a plan for what to do if the individual will not cooperate and leaves.
- Create at least a short-term strategy with the assistance of necessary experts.
- Safety is essential for all concerned — do not permit the individual to drive home.
- Suspend the employee with pay if appropriate.

## **BUILDING A CULTURE OF PREVENTION, WELLNESS AND SUPPORT**

The staggering numbers in this study, which suggest that as many as 500,000 practicing lawyers are problem drinkers and close to 400,000 suffer from depression, will not be decreased with a tweak here or there. And the study does not even include those employees and staff of law firms subjected to many of the same stresses and demands. Many of the qualities that reward today's attorney — a competitive spirit, high self-esteem, emotional detachment, an analytical skill set, high verbal skills, a win-at-all-costs mentality — are precisely the same ones that block the road to recovery.

What is required is a seismic shift in culture. More than just a refusal to toss the sick aside, we need a realization that it is in the best interests of the law firm to promote and sustain a culture of wellness and balance.

Much of the corporate world has come to this realization. Working hours of employees have been limited. Access to company emails on weekends has been denied. Company cafeterias have become nutritionally balanced. Gyms have been built, and yoga classes offered. Seminars on health topics have been provided, and incentives for good health have been offered. Working from home has been restricted.

Additional leave has been created. Sabbaticals have been implemented. Counseling services have been supplemented. These corporations (and their insurers) have recognized that a lack of balance results in both physical and mental states that impair employees and often shorten their tenure.

By way of example, here some initial suggestions on how law firms might begin this process:

- Invest in resources and services to enhance the wellness of all employees.
- Provide speakers and materials about balance and wellness.
- Educate all personnel about stress, anxiety, depression, opioids, sedatives, alcohol, burnout and addiction and tools with which to confront or prevent problems in connection with them (with CLE credits).
- Host nonalcoholic professional events and gatherings.
- Create a retreat that focuses on learning balance, relaxation, stress-reduction, meditation, team-building and breathing techniques.
- Partner on healthy initiatives with your HR department, Employee Assistance Program (EAP), health care and malpractice providers, state lawyers' assistance program and other industry experts.
- Lower the minimum billable hours requirement and set a maximum.
- Create specific policies that permit employees to seek help for addiction or mental health issues without concern for their job security.
- Provide a back-to-work plan and path for any employee who has received help for such a problem and is treating that condition. The plan can include monitoring and accountability so that all parties can be assured there is no danger to the client or the firm, and specific conditions can be set in the event of a relapse by that employee or a failure to improve job performance.
- Use this model as a recruiting tool for law students and other lawyers and staff.

The profession itself has much it can do, and that is a topic for another day. However, within the law firm itself, change can begin. Today thousands of productive law firm employees are treating chronic illnesses and mental health conditions and are assets to their firms and clients. It is the hundreds of thousands of attorneys and others who are working with untreated addiction or mental health issues who suffer daily and pose untenable risks to others.

Certainly the best minds in our country — our most talented problem-solvers — can crack the stigma that prevents them from asking for help while at the same time building a business model that sustains productivity and personal satisfaction.

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### COURSE DESCRIPTION

In 2016, The Journal of Addiction Medicine published a groundbreaking study by Hazelden Betty Ford and the American Bar Association Commission on Lawyer Assistance Programs: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys." Although it has been commonly presumed that the legal profession had a heightened rate of these problems as compared to the general public and other professions, nobody expected the numbers — reported by only active, practicing attorneys — to rise to the level that they did. It has now been clearly revealed as a full-blown crisis that cannot be ignored. This course will detail the findings of the study and its potential consequences, while providing insight into the disease of addiction itself and how it presents itself in a law firm setting. Further, it will provide strategies and tools for handling both present-day concerns as well as suggestions for prevention of these problems and a necessary shift in law firm culture. them from accountants and consultants themselves.

### COURSE OBJECTIVES

- Review the Journal of Addiction Medicine study and describe the current extent of substance abuse and other mental health concerns among licensed attorneys.
- Identify the potential damaging consequences when a lawfirm does not confront these issues.
- Define addiction and how it typically manifests itself within a law firm.
- Explain the process of recovery from addiction, as well as the obstacles and rewards of the addict's return to work as a sober employee.
- Break down what constitutes "high-functioning" addicts and why they so often elude detection.
- Examine strategies for confronting an employee's behavioral health crisis when it occurs at the law firm.
- Discuss new strategies for building a culture of prevention, wellness and support.

**SHRM:** This program has been pre-approved for SHRM for 1 PDC for the SHRM-CP or SHRM-SCP.

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