Substance Abuse and Mental Health Issues [SAMHI]: The Hidden Ethical Challenge

I. INTRODUCTION

It may come as no surprise that lawyers suffer very high rates of mental health and substance use disorders. Lawyers are handed their clients' worst problems and are expected to solve them. They are supposed to be perfect, or their reputations dwindle. If they make a mistake, it can be devastating to a client's life. There is little time to smell the roses, and when that opportunity comes, it is hard if not impossible to stop thinking about the fires which need putting out at the office. It is a tremendous understatement to say that the life of a lawyer can be very stressful and difficult.

For decades, researchers have looked at the strenuous lifestyle and bad habits of lawyers. They have found extraordinary differences between the mental health and substance use proclivities of attorneys compared to non-lawyers. A recent law review article noted that attorneys have the highest rate of depression of any occupational group in the United States.[1] Another study showed that attorneys suffer depression 3.6 times as often as the general population.[2] With regard to alcohol use, researchers have understood since a major study in 1990 that attorneys have much higher than usual rates of problem drinking and mental health issues. In the last few years, the details of the extent of the legal world's woes are revealed in two major studies regarding the degree to which attorneys and law students suffer from such mental health and substance use disorders.[3]

With this data in hand, bolstered by countless court findings ineffective assistance of counsel, disciplinary hearings, and ethics committee sanctions, in 2016 the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation released a groundbreaking study of almost 13,000 employed attorneys which showed that 21% of attorneys screened positive for problematic drinking, defined as "hazardous, harmful, and potentially alcohol-dependent drinking" (some have referred to these people in the past as "alcoholics"), 28% suffer from depression, and 19% suffer from clinical anxiety.[4]

Perhaps even more disturbing, 36% reported drinking alcohol in a quantity and frequency that would indicate "hazardous drinking or possible alcohol abuse or dependence," 46% felt they suffered depression in the past, and 61% reported concerns about anxiety.[5] As a reference to how these numbers stack up to the norm, about 6% of adults over 26 years of age suffer from problematic drinking versus 21% of attorneys, Only 15% of doctors reported drinking alcohol in a quantity and frequency that would indicate hazardous drinking or possible alcohol abuse or dependence versus 36% of lawyers.[6]

When it comes to suicide, lawyers have consistently been at or near the top the list of all professionals in suicide rates; twice as likely as the average person.[7] These are stunning findings. No one wants to be troubled by thinking about these issues, but they demand real attention. This presentation is an effort to provide some basic information and tools to help attorneys and others in contact the legal community understand and address the unique and substantial stress, mental health and substance use issues from which so many attorneys suffer.

II. DEFINING THE ISSUES

While there are a large number of hardships faced by attorneys practicing law across the Middle District of Pennsylvania, the following are some of the most common and most serious:

A. Anxiety Disorders

Disorders relating to anxiety range from a general Panic Attack (which is Panic Disorder with or without Agoraphobia[8]) to specific phobias such as Social Anxiety Disorder (SAD), Obsessive-Compulsive Disorder (OCD), Posttraumatic Stress Disorder (PTSD), Acute Stress Disorder (ASD), Generalized Anxiety Disorder (GAD), Substance-Induced Anxiety Disorder, anxiety due to a medical condition, and anxiety disorder not otherwise specified. Generalized Anxiety Disorder is prevalent in the legal community, although most lawyers would argue that its symptoms sound like what one experiences every day when practicing law.[9]

B. Substance Use Disorders and Process Addictions.

Approximately 21% of the lawyers in the United States are affected by alcohol and other substance use disorders compared with about 6% of the general public in the same age group.[10] The substances used to excess include: alcohol, amphetamines, methamphetamine, caffeine, club drugs, cocaine, crack cocaine, hallucinogens, heroin, marijuana, myriad prescription drugs, nicotine, sedatives, steroids and a combination of all of the above (polysubstance abuse/dependency).

Substance use disorders span a wide variety of problems arising from substance use. The following are the 11 different criteria for diagnosing a substance use disorder under the recently established DSM-5[11]:

1. Taking the substance in larger amounts or for longer than meant to.
2. Wanting to cut down or stop using the substance but not managing to.
3. A lot of time getting, using, or recovering from use of the substance.
4. Cravings and urges to use the substance.
5. Not doing what should be done because of substance use.
6. Continuing to use, even when it causes problems in relationships.
7. Giving up important activities because of substance use.

8. Using substances again and again, even when it puts one in danger.
9. Continuing to use, even when there is a physical or psychological problem.
10. Needing more of the substance to get the effect wanted (tolerance) and/or
11. Development of withdrawal symptoms, then relieved by taking more.

The DSM-5 further provides a measure for determining disorder severity:

> MILD: 2 or 3 symptoms indicate a mild substance use disorder;
> MODERATE: 4 or 5 symptoms indicate a moderate substance use disorder; and
> SEVERE: 6 or more symptoms indicate a severe substance use disorder. Clinicians can also add "in early remission," "in sustained remission," "on maintenance therapy," and "in a controlled environment."

Though they are not all classified as substance use disorders, an increasing number of lawyers also experience process addictions (compulsive or mood-altering behavior related to a process such as sexual activity, pornography – primarily online, gaming, exercise, working, eating, shopping, etc.). And the DSM-5 now recognizes Gambling Disorder as a behavioral addiction.

C. Depressive Disorders.

Lawyers often present with symptoms of depressive disorders, including Major Depression, Persistent Depressive Disorder (formerly referred to as Dysthymic Depression), Compassion Fatigue, and Depression Not Otherwise Specified.

Major Depressive Disorder: A major depressive episode is a period characterized by the symptoms of major depressive disorder when five or more of the following are present during the same two-week period: depressed mood most of the day, nearly every day, as indicated by subjective report or observation made by others; markedly diminished interest or pleasure in all or most activities most of the day, nearly every day; significant weight gain or loss (when not dieting) or decrease or increase in appetite nearly every day; insomnia or hypersomnia nearly every day; psychomotor agitation or retardation nearly every day; fatigue or loss of energy nearly every day; fatigue or loss of energy nearly every day; feelings of worthlessness or excessive or inappropriate guilt nearly every day; diminished ability to think or concentrate, or indecisiveness, nearly every day; and/or recurrent thoughts of death, recurrent suicidal ideation without a plan, suicide attempt or a specific plan for completing suicide.[12]

Persistent Depressive Disorder: This is a disorder involving a depressed mood that occurs for most of the day, for more days than not, for at least 2 years with the presence of at least two of the following six symptoms: poor appetite or overeating; insomnia or hypersomnia; low energy or fatigue; low self-esteem; poor concentration or difficulty making decision; and/or feelings of hopelessness.[13]

Compassion Fatigue and Burnout. Compassion fatigue has been defined as "a combination of physical, emotional, and spiritual depletion associated with caring for persons in significant emotional pain and physical distress."[14] Its components are the presence of Secondary Traumatic Stress (STS) in combination with a condition commonly referred to by lawyers as "Burnout":

> **Secondary Traumatic Stress.** Secondary Traumatic Stress is the presence of traumatic symptoms caused by indirect exposure to the traumatic material. Symptoms are similar to Post Traumatic Stress Disorder, except the information about the trauma is acquired indirectly from communicating with the person who personally experienced the traumatic event. Persistent avoidance of the stimuli associated with the trauma (the client, the case, specific facts, etc.) and numbing of general responsiveness develops. Persistent symptoms may include increased arousal such as difficulty falling or staying asleep, problem concentrating, angry outbursts, hyper vigilance, or exaggerated startle response.
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> **Burnout**. Burnout is the term used by many lawyers to describe the psychological syndrome of emotional exhaustion, depersonalization and reduced personal accomplishment. Burnout may be evidenced by increased negative arousal, dread, difficulty separating personal and professional life, inability to say "no," increased frustration, irritability, depersonalization of clients and situations, diminished enjoyment of work, diminished desire or capacity for intimacy with family and friends, diminished capacity to listen and communicate, subtle manipulation of clients to avoid them or painful material, diminished effectiveness, loss of confidence, increased desire to escape or flee, isolation.

If you are concerned about suffering from Compassion Fatigue, you may be interested in taking the self-assessment test at http://www.compassionfatigue.org/pages/cfassessment.html.

D. Suicide

On January 6, 2021, the ABA Commission on Lawyer Assistance Groups published an article entitled *What is Suicide*.[15] Citing the CDC, the ABA says suicide is a leading cause of death in the United States. High rates of suicide exist for those who are middle-aged and elderly. COVID-19 has made that situation worse. Although males are nearly four times as likely to take their own lives as females, women attempt suicide two to three times as often as men.

A correlation exists between suicide, depression, and other mental health issues, including substance abuse. Statistics suggest that many who commit suicide were under the influence at the time of death. In one study, approximately one third of those who committed suicide were positive for alcohol at the time of death and approximately

1 in 5 had evidence of opiates. Suicide victims don't necessarily want to die. Instead, they want relief for their intense psychological pain. They often feel hopeless and that there is no solution.

Fortunately, help is available for those at risk of suicide. That help can be found at the National Suicide Prevention Hotline available 24/7 at 1(800)273-8255 (TALK). Specific to Central Pennsylvania, in Adams, Cumberland, Dauphin, Franklin, and Perry Counties call 1-800-932-4616, in Carlisle the number is 717-249-6226 and in Harrisburg its 717-652-4400. Support is also available at the Lawyers Concerned for Lawyers – Pennsylvania – Helpline 888-999-1941.[16]

III. Ethical Rules Central to SAMHI

The Supreme Court of Pennsylvania recognizes that lawyers may become ill and need to seek specialized treatment. The Court further recognizes that fear of disclosure will prevent many from seeking help. Rule 8.3 (c) of the Rules of Professional Conduct addresses that concern by providing an exception to the duty to report: "The Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyer assistance program."

Comment 7 says Rule 8.3 "… encourages lawyers and judges to seek treatment through [an approved assistance program]. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, *which may then result in additional harm to their professional careers and additional injury to the welfare of clients and to the public*." (emphasis added). *Lawyers Concerned for Lawyers*, LCL, is the Commonwealth's approved assistance program.

Impaired lawyers may commit ethical violations that run afoul of several Pennsylvania Bar Rules including Rule 1.3 on diligence, Rule 1.4 on communications, and Rule 1.6 on confidentiality of information. The part of Rule 1.6 that prohibits a lawyer from representing or continuing to represent a client where "the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client" is directly implicated.

All in the legal profession have an ethical obligation to report a colleague, co-counsel, or opposing lawyer if the attorney has concerns about the representation that may be averse to the client's interest — but don't want to get them into trouble. Consider an anonymous call to the Commonwealth's approved lawyer assistance program, LCL. If you are worried about hurting someone's career, know they are hurting their own, and by saying something you can help them, and protect his/her client. See Rule 8.3(a) Reporting Professional Misconduct. And, failing to report in the appropriate situation may run afoul of Rules 8.3 and. 8.4. But remember, "a peer review agency, [may be] more appropriate in the circumstances." Rule 8.3., Comment 5.

ENDNOTES

[1] *See Lawrence S. Krieger and Kennon M. Sheldon, What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers. 83 GEO. WASH. U. L. REV. 554 (2015), also published as FSU College of Law, Public Law Research Paper No. 667(2014); see also Rosa Flores & Rose Marie Arce, why are lawyers killing themselves? CNN (Jan. 20, 2014, 2:42 PM), http://www.cnn.com/2014/01/19/us/lawyer-suicides/.*

[2] *See William Eaton et al., Occupations and the Prevalence of Major Depressive Disorder, 32 J. OCCUPATIONAL MED. 1079, 1085 table. 3 (1990).*

[3] See www.americanbar.org/groups/lawyer_assistance/task_force_report, 11/18. See also Justin J. Anker, Ph.D., Attorneys and Substance Abuse, Butler Center for Research (2014) (www.hazelden.org/web/public/document/bcrupattorneyssubstance abuse.pdf).

[4] *See* Patrick Krill, Ryan Johnson, and Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Journal of Addiction Medicine, Feb. 2016, Vol. 10, #1.

[5] *Id.*

[6] *Behavioral Health Trends in the United States: Results from the 2015 National Survey on Drug Use and Health, U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 9/15, http://www.samhsa.gov/data/sites/default/files/NSDUH-FRR1-2014/NSDUH-FRR12014.pdf.*

[7] A 1992 OSHA report found that male lawyers in the US are two times more likely to commit suicide than men in general. *http://www.lawpeopleblog.com/2008/09/the-depression-demon-coming-out-of-the-legal-closet/.* According to a 1991 Johns Hopkins University study of depression in 105 professions, lawyers ranked number one in the incidence of depression. *See William Eaton et al., Occupations and the Prevalence of Major Depressive Disorder,* 32 Journal of Occupational Medicine 11, pg. 1079 (1990).

[8] This is a type of anxiety disorder in which you fear and often avoid places or situations that might cause you to panic and make you feel trapped, helpless or embarrassed.

[9] *See* www.depression-screening.org for self-assessment screening tests for anxiety disorders.

[10] *See* Patrick Krill, Ryan Johnson, and Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Journal of Addiction Medicine, http://journals.lww.com/journaladdictionmedicine/fulltxt; s*ee also Darling et al., The prevalence of depression, alcohol abuse, and cocaine abuse among United States lawyers,* 13 International Journal of Law and Psychiatry 233-246 (1990).

[11] The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, abbreviated as DSM-5, is the 2013 update to the American Psychiatric Association's (APA) classification and diagnostic tool. In the United States, the DSM serves as a universal authority for psychiatric diagnosis. *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. text rev. 2013) (hereinafter "DSM-5"). *See also* *www.alcohol screening.org/* for an alcohol use disorder self-assessment test.

[12] www.depression-screening.org offers a depression self-assessment screening test.

[13] *See* DSM-5.

[14] Barbara Lombardo & Carol Eyre, *Compassion Fatigue: A Nurse's Primer*, The Online Journal of Issues in Nursing, 16-1 (2011).

[15] *See* www.americanbar.org/groups/lawyer_assistance/resources/suicide/

[16] All of the topics discussed here have been exacerbated by the COVID-19 pandemic. The negative effects on clients, cases and the business aspects of the practice have been devastating. Resources and support specifically geared to the impact of the virus can be found at www.lclpa.org/wp-content/uploads/2021/03/March2021-LCL-COVID-Resource Guide.pdf.

Tony Gallagher, Federal Defender, District of Montana
April 2021

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