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Chemical Dependency in the Legal Profession: Oregon's Response

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I. The Chemically-Affected Attorney

It is 8:20 a.m., Chief Criminal Court. Attorney A's case is on call. It is called — no answer. Bench warrant. Attorney A calls the court at 11:00 a.m., mumbling an excuse. He pleads with the judge's secretary, getting the bench warrant lifted and the case back on the docket. Attorney A tells the client that the court rescheduled the case.

Attorney B's client calls to ask if the contract is ready. Attorney B apologizes and explains that it is not quite ready; she has been sick or out of town, but it has been dictated and the secretary is working on it now. It will be ready tomorrow. When the client hangs up, Attorney B tries to make sense of her notes from the client interview. It has been two and one-half weeks, and they are a bit skimpy. She will have to stay late to get the contract to the secretary by morning, with a rush order to have it ready by the afternoon.

It is 2:40 p.m., and Attorney C comes back from lunch. "Your 2:30 appointment is here, Mr. C." His secretary catches the smell of alcohol, sees the eyes a bit out of focus, the body just a bit off balance. But, she dare not suggest that Attorney C is not in an appropriate condition to see the client. He would only resent it and make her job tougher.

These problems are common to the chemically-affected attorney. Procrastination, poor preparation, injudicious case selection and evaluation, missing work, coming in late, making up work in the evenings and on weekends, missing appointments and deadlines, overloading support staff, and living from crisis to crisis. The list is endless. Some of these problems may be familiar to many attorneys, but the attorney addicted to alcohol or other drugs will be unable to cope with them. Unless the chemical influence is eliminated, the professional problems will steadily worsen. Attempts to manage the repeated crises only increase the level of stress, and more chemicals

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are used to relieve the pressure. The chemicals exacerbate the problems and create a vicious cycle.

Alcoholism¹ is a physiological disease.² It is a primary illness, not necessarily the result of other problems, and it blocks the treatment of other medical and emotional conditions.³ Alcoholism is chronic, progressive, and if untreated it is fatal.⁴ It is this country's most untreated treatable disease, and it results in the premature death of approximately ninety-five percent of its victims.⁵

Numerous warning signs indicate a substance abuse problem: deteriorating level of productivity; frequent accidents; decrease in quality of work; extended coffee breaks; prolonged absence from the office during the day; absenteeism; less than full attention to work; lack of concentration and wandering; falling asleep at work; frequent trips to the restroom; increasing isolation; personality changes such as irritability, aggression, or depression; weight loss, bloating, or physical deterioration; "borrowing" from trust funds, clients, or partnerships; increase in problems with personal relationships; use of alcohol or other drugs during the working day or at the office; missed appointments and court appearances; and missed statutes and deadlines.⁶ This country pays a high price for its love affair with mood-altering chemicals in loss of lives and loss of production. Alcoholism is a major cause of death through traumatic accidents and illness.⁷ Health care costs for alcoholics and for co-alcoholics⁸ are four to five times that of the norm.⁹ There are approximately 13,000,000 al-

1. As used in this Article, "alcoholism" refers to addiction to any mood-altering chemical.

2. Alcoholism is defined by James Milam, Ph.D., as "a chronic, primary hereditary disease which progresses from an early, physiological susceptibility into an addiction characterized by tolerance changes, physiological dependence, and loss of control over drinking. Psychological symptoms are secondary to the physiological disease and not relevant to its onset." J. MILAM & K. KETCHAM, *UNDER THE INFLUENCE* 170 (1981) [hereinafter J. MILAM]. In the same book, Milam writes: "Addiction to alcohol ensures that the alcoholic will quickly become addicted to pharmacologically similar drugs, a process called *cross-addiction*." *Id.* at 157.

3. *The Disease Concept of Alcoholism* (a video, Dr. David Ohlms, Gary Whiteaker Company, Inc., 1981) [hereinafter *Ohlms*].

4. J. MILAM, *supra* note 1, at 75.

5. *Ohlms*, *supra* note 3.

6. These warning signs are derived from personal experience working with alcoholics and from various materials, including J. MILAM, *supra* note 1; *Ohlms*, *supra* note 5; BISSELL AND HABERMAN, *Alcoholism In The Professions* (1984); JOHNSON, *I'll Quit Tomorrow* (1980); D. SMITH, M.D., AND D. WESSON, M.D., *Treating The Cocaine Abuser* (1985).

7. J. MILAM, *supra* note 1, at 9.

8. Family members and friends of an alcoholic who are severely affected by an alcoholic's behavior are referred to as co-alcoholics. T. CERMAK, M.D., *A Primer On Adult Children Of Alcoholics*, 13 (Health Communications, Inc., 1985).

9. *Id.* at 14.

coholics in the United States and most are employed.¹⁰ Forty-five percent of these alcoholic workers are professionals or managers.¹¹ Six percent of the job force is suffering from the late stages of alcoholism.¹²

Chemical dependency affects the legal profession as severely as it does other professions. Oregon estimates that fifty percent of all malpractice claims and disciplinary actions are brought against attorneys with substance-abuse problems.¹³ New York and Illinois estimate an even greater percentage.¹⁴ The detrimental effect of alcoholism on the legal profession and legal professionalism, as well as heightened awareness and knowledge of the nature of addiction, have caused the bars of numerous states to initiate programs addressing substance abuse in the legal profession.¹⁵

II. Oregon's Alcohol and Chemical Dependency Program

In 1982, the Oregon State Bar Professional Liability Fund (PLF) initiated the Alcohol and Chemical Dependency Program.¹⁶ Through education, intervention, and ongoing support during recovery, this program has made an impact on substance-abuse problems in the Oregon legal community. The program has two full-time attorney counselors who locate chemically-affected persons in the legal field and encourage them to seek a program of recovery.

The program enlists the help of recovering attorneys to convince

10. D. Mast, *Designing Employee Assistance Programs*, 75 (available from American Management Association, Publications Group).

11. *Id.*

12. *Id.*

13. The Professional Liability Fund, through which all malpractice claims are filed, arrived at this estimate in 1981 by comparing the list of attorneys against whom claims had been filed with those attorneys whose drinking problems were "common knowledge" within the profession.

14. Conversation with The Honorable Warren Wolfson, Chicago, IL, and Steven C. Tabackman, Lawyer Counselling Committee, District of Columbia Bar, at the 1987 ABA National Conference on Professionalism in Denver, Colorado.

15. To obtain a list of state bar-related substance abuse programs and descriptions of each program, contact the American Bar Association, Bar Services Department, 750 North Lake Shore Drive, Chicago, IL 60611, and request MAP Package No. 1 (Models and Packages Program), "Alcohol and Drug Abuse Program for Lawyers and Judges."

16. Initially, a small group of attorneys in recovery from alcoholism and concerned about substance abuse problems in the legal profession met to plan how to address those problems. In 1981, they published a phone number in the Oregon State Bar Bulletin for attorneys to call for information or help, but got no responses. Les Rawls, the executive director of the Professional Liability Fund, was interested in trying to address the same problems from a loss prevention perspective. Don Muccigrosso, a recovering attorney who had relocated in Oregon from New York, was interested in working with attorneys with chemical abuse problems. These three factions found each other in 1981, and, in 1982, Les Rawls hired Don Muccigrosso to create the Alcohol and Chemical Dependency Program for the Professional Liability Fund.

alcoholic attorneys to try sobriety and to give support during recovery. The program also asks the entire legal community to identify attorneys who need assistance. Referrals come from recovering attorneys, partners and associates, friends, clients, family members, secretaries, and judges.¹⁷ The Alcohol & Chemical Dependency Program cannot force a person into treatment; recovery is totally voluntary. A law firm, however, may require treatment as a condition of employment. The following composite cases are based on common situations and illustrate how the program works.

III. The Program in Action

The confidential line rings. The voice on the other end of the line is uncertain. "Everything is supposed to be confidential, right?" I assure the voice that indeed it is confidential; in fact, she need not even tell me her name. She says she thinks she might have an alcohol problem, but wants to know how she can tell. She begins to talk a bit about recent problems: she got smashed at a party and was sick for two days afterward, she seems to have more problems than usual and has a hard time coping. I talk to her about alcoholism and my own experience with alcohol. Later, in the office, I show her a short film about the physiological aspects of the disease. I tell her how alcohol affected my life and the way I practiced law. As we share experiences, I tell her how I got sober and about the incredible changes that have occurred in my life through my recovery from alcoholism. I invite her to our Monday night support meeting for attorneys recovering from chemical dependency, and she agrees to come. She is apprehensive at that first meeting, but the warmth and sharing among the attorneys she meets convinces her to come back. She is on her way to recovery.

I get a call from Sheila who wants to know something about our program. She says her husband is driving her crazy and ruining his practice. He is drinking and using drugs, but his basic problem is that he just does not seem to care anymore about anyone or anything except himself. She wants to know if I can do something about it, but she doesn't want him to know that she called. I talk to her about Al-Anon, a support system for the families and friends of chemically-affected people. She is somewhat offended that I won't run out

17. All information received by the program is confidential. It can never be obtained by the Bar or the Fund for use in disciplinary actions, claims, or for any other purpose. This policy is supported by DR 1-103(E) of the Code of Professional Responsibility, which exempts the Professional Liability Fund employees from being required to report information concerning ethical violations to the Oregon State Bar.

immediately to help her husband, that instead I suggest that she might get help herself. I tell her that our program cannot force people to get treatment, but that I will try to find out if any recovering attorneys know of her husband's problem with chemicals and would be willing to talk to him about recovery. I talk to her about formal intervention, asking if other family members, friends, or attorneys might be interested in convincing her husband to seek treatment. She is sure no one else would be willing to do this. Although she is dissatisfied with our conversation, the process that will eventually lead to her husband's recovery and to her own recovery from co-dependency has begun.

Over the next few months, I begin to learn about the husband. One of the attorneys in recovery knows him well and has in fact talked to him about his chemical problem with no success. A secretary and an associate in his office are very concerned about his problem. Actually, he has tried to stop drinking and using drugs a number of times and has even sought help from his physician. He manages to stay away from the chemicals for short periods of time, but each time returns to using them and becomes sicker. His use is beginning to affect his work.

After several months, I get another call from his wife. She is truly at her wit's end and is now willing to try anything. She has discovered that there are other people interested in helping. With education and support, these people decide to intervene between the attorney and his chemicals. The attorney still believes he can handle the problem himself. He does not want to go into treatment, but for a brief time he is willing to do so. He is taken immediately to the treatment program. If he needs residential treatment and has no money or insurance, the PLF will loan him the necessary funds. If he needs help with his law practice while he is in treatment, the attorney support network is available to assist him.

IV. Supporting Recovery

While a chemically-dependent attorney is in treatment, the attorney support network contacts him and talks to him about the ongoing support system for recovering attorneys. When he leaves treatment, we continue to contact him regularly, taking him to meetings and helping him through the difficult period of early recovery.

Sometimes attorneys do not accept recovery so readily, but we do not give up. Gently, but persistently, we remind them that we are available; when they are ready, we can help. Sometimes the process

takes years; sometimes it does not work at all. But, it works more often than not,¹⁸ and the benefits of recovery are many and great.

Without exception, attorneys who remain in recovery tell us that the quality of their work improves with sobriety. Recovery is a process that requires constant growth and changes in attitudes and behavior. It also requires honesty, integrity, determination, and humility. The principles of recovery — responsibility for one's own actions and for one's own life, responsibility to others, and striving to do one's best — are the same principles that underlie professionalism and ethics.

V. Conclusion

The extent to which Oregon's program affects the drinking behavior of the legal community is difficult to assess, particularly in light of its relatively short existence. However, the program demonstrates that it saves lives and reduces the incidence of claims.

Oregon's Bar includes approximately 9,000 members.¹⁹ In 1982, there were perhaps 12 recovering attorneys. Today, 5 years later, there are over 200 recovering attorneys.²⁰ One-half of these attorneys had claims against them that arose during their drinking careers. After sobriety, the incidence of claims has dropped to three percent.²¹ Oregon's experience should encourage every state bar to institute a program to assist those members of the legal profession affected by alcohol and other drugs.

18. This is the author's personal impression. At this time, no accurate statistics are available by which to compare the number of contacts with the number of those contacted who accept recovery. However, a system for maintaining accurate statistical data is planned for early 1988.

19. Oregon State Bar records.

20. Professional Liability Fund Alcohol and Chemical Dependency Program informal mailing list.

21. This statistic is based on a study done in 1985 with a sample of 108 attorneys who had been sober at least one year. Comparison was made between claims made against these attorneys prior to becoming sober and claims arising after the attorneys became sober.