

## Getting Help When You Need it

**If a lawyer has significant personal problems, who should he call for professional consultation and help?**

By Richard Carlton



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Here is a scenario frequently presented to those of us who work in the field of lawyer assistance:

A colleague or attorney friend is having major problems with his or her practice.

You suspect or know that these problems result from substance abuse, depression, other psychological problems, or a combination of these conditions. You know that the road this person is on is downhill all the way, but you feel powerless. You're concerned about your friend's welfare, but you don't want to do anything that will get your attorney-friend in more trouble. Where can you call for free, strictly confidential, knowledgeable advice and assistance with such a situation?

The answer is the Lawyer Assistance Program (LAP). Established by the California Legislature (B&P Code §§6140.9, 6230-6238), the Lawyer Assistance Program is a confidential service of the State Bar of California. Staffed by professionals with many years of experience assisting the legal community with personal issues, the LAP provides assistance to attorneys whose personal or professional life is being detrimentally impacted by substance abuse, other compulsive behaviors, and/or mental health concerns such as depression and anxiety.

The statute that created the program (SB 479, Burton) states that it is the "intent of the legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety."

The LAP is a comprehensive program offering support and structure from the beginning stage of recovery through continuing care. It includes:

- individual counseling;
- expert assessment and consultation;
- assistance with arrangements for intensive treatment;
- monitored continuing care;
- random lab testing;
- professionally facilitated support groups; and
- peer support groups.

The program also works with family members, friends, colleagues, judges and other court staff who wish to obtain help for an impaired attorney. Financial assistance is available so that no one is prevented from participating in the program due to financial limitations.

Attorneys may self-refer into this program or may be referred as the result of an investigation or disciplinary proceeding. In some cases, monitored participation may result in a lower level of disciplinary action. When requested by an attorney who is facing disciplinary charges and whose practice has been impaired by personal problems, the LAP can monitor the attorney's continuing recovery for the State Bar Court's alternative discipline program and for the probation unit.

One of the unique characteristics of this program is that the confidential nature of participation in the program is mandated in the statute that created the program. The fact that an attorney is participating in the LAP is strictly and absolutely confidential. No information concerning participation in the program will be released without the attorney's prior written consent.

The creation of attorney-only assistance programs is an outgrowth of years of experience in addressing substance-related disorders and mental health issues in professional populations and the unique challenges associated with such efforts. Most licensed professionals in California have some type of assistance resource available through their regulatory agency. The Physician Diversion Program of the California Medical Board was created by the legislature more than two decades ago and served as one of the models for the Lawyer Assistance Program.

## **Why do attorneys need their own assistance program?**

### **SUBSTANCE-RELATED DISORDERS — THE DISEASE MODEL**

Substance dependence has been accepted as a disease since the 1960s. Substance dependence has these following disease-model characteristics:

1. Chronic — it is a permanent condition that can be arrested but not cured;
2. Progressive — if left untreated, the condition gets worse;
3. Fatal — if left untreated, the condition can be and often is fatal;
4. Recognizable symptoms — the symptoms are clearly recognizable without the aid of tests;
5. Treatable — while the condition cannot be cured, the progression of the disease can be arrested and people live happy, healthy and productive lives in recovery.

### **BRAIN DISEASE**

Substance abuse is often referred to as a “brain disease.” Although the disease has a profound impact on many of the major organ systems in the body, it is altered brain chemistry that creates the craving for mood-altering substances and explains the loss of control that occurs. The differences in brain chemistry that lead to substance abuse occur in the core of the brain where the autonomic nervous system is regulated — not in the frontal lobe area where conscious, rational decision-making takes place. This altered brain chemistry produce an obsessive, compulsive and irrational need to drink or use drugs despite adverse consequences to the user’s own life and health.

The later stages of the disease are accompanied by the experience of pain (both physical and emotional) after the effects of the alcohol or drugs have faded, and those afflicted begin to use substances in order to avoid the pain rather than to experience pleasure. In the final stages of the disease, total loss of control over the use of alcohol or drugs is common, and this loss is progressive and permanent.

### **DENIAL**

Denial is an important characteristic of the progression of the disease of substance abuse. As the disease develops, the afflicted individual becomes increasingly unable to accurately perceive what is happening. Perception becomes distorted. The individual denies symptoms of abuse and continues to use. Denial is often mistaken for deceit or dishonesty instead of the

distorted perception that it represents.

Denial, rationalization and euphoric recall are natural ego-defense mechanisms that all of us utilize. These mechanisms are used in the mind of the addict/alcoholic to avoid facing the embarrassment and shame that would otherwise be overwhelming. The individual also begins to need to defend against the criticism of others and avoid admitting that he or she has a problem that cannot be overcome alone. This powerful defense develops subtly and denial strengthens as the disease progresses.

### **Substance-related disorders in the legal profession: the challenge**

Substance-related disorders appear to be a more common problem in the legal profession than it is in most other occupations. While household studies indicate that roughly 10 percent of the adult population experiences a problem at some point in life as a result of the abuse of alcohol or drugs, several studies suggest that the incidence of this abuse among legal professionals may be as much as 50 percent higher than the general adult population. This apparent occupational hazard is most often attributed to the stress of legal practice, though there may be a natural self-selection process at work as well. The same personality traits that are over-represented in the population of adults who are recovering from substance-related disorders — high achievement orientation, perfectionistic, obsessive-compulsive — also are common in the legal community.

A substance-dependent attorney in the throes of denial presents a challenge, even for the most skillful treatment professional. Many require or expect a greater level of “proof” that the problem exists or that they are no longer in control of their use. They are more inclined to argue these points with concerned colleagues and friends, and even with treatment professionals. In addition, lawyers with these problems typically:

- have outstanding verbal skills;
- expect to be looked to for answers rather than seeking answers or advice from others;
- have a strong resistance to showing weakness or needing help; and
- need to be in control.

### **Getting help**

The tragic result of these particularly strong ego defenses in the population of substance abusing legal professionals is that only a small percentage of those attorneys who need help with their problems are aware of their need; accordingly, few seek help. Contrary to popular

myth, it is not necessary for those close to a substance dependent attorney to wait for the attorney to hit his or her own proverbial “bottom” before help can be successfully rendered. It is neither necessary nor advisable to wait until the attorney, his or her clients, colleagues or family, suffer irreparable harm.

Intervening to present an impaired attorney with a caring and compassionate message about the impact of his or her behavior is often effective. This can be achieved informally in personal conversation with the attorney or formally when professionals facilitate a formal meeting. The goal of any “intervention,” whether it be a friend expressing concern or an employer extending an ultimatum, is for the individual to obtain proper assessment and appropriate treatment.

Do not underestimate the value of expressing your concern. Many people who are currently in recovery from this disease are able to reflect back with gratitude toward those who demonstrated the courage to speak up. Many report that this courage helped to save their life. Programs like the Lawyer Assistance Program are available to help with expressing concern and finding appropriate assessment and treatment. You do not have to address these issues alone.

### **Peer support**

Having the support of a group of peers struggling with the same issues and challenges tends to break through the denial and reduce the shame associated with having this disease. Substance-dependent attorneys therefore respond better and experience a higher success rate when at least a part of their treatment occurs within their peer group. In recognition of this, attorney-only peer-support group meetings called The Other Bar began forming in many California communities more than two decades ago and now exist in nearly every community in the state. The Lawyer Assistance Program also offers professionally facilitated process groups for attorneys with both substance abuse and mental health issues. These groups are an important component of recovery for attorneys participating in the LAP, many of whom also attend The Other Bar meetings.

### **Depression and stress**

The practice of law is a challenging experience for many legal professionals. Studies indicate that attorneys experience extraordinarily high levels of stress and depression and have a higher than normal level of job dissatisfaction with their chosen career:

- At least a quarter of attorneys surveyed in multiple studies report suffering from stress so

severe it impairs their practice.

- A Florida study revealed that 32 percent of the attorneys reported feeling depressed at least once a week.
- A Maryland Bar Association study found that one in three of the lawyers who responded intended to leave the practice of law within five years.
- A study by the ABA found that 40 percent of the lawyers responding were dissatisfied with their jobs.
- A study of 12,000 adults by a team of researchers from Johns Hopkins University discovered that among all the occupational groups represented in that large sample, attorneys had the highest prevalence of signs and symptoms of clinical depression. The rate of depression among the attorneys studied was 3.6 times the norm for all occupations.

Studies indicate that attorneys are less likely to take care of themselves than medical doctors and other professionals. Psychologists have observed that attorneys, who are trained to be impersonal and objective, often apply the same approach to their personal problems and are reluctant to focus on their inner emotional lives. Some attorneys believe they should be able to handle their personal problems just as effectively as they handle their client's problems.

Emotional distress, if not managed or treated, can lead to adverse impacts on an attorney's professional practice, clients, colleagues and personal life. Concerned colleagues and friends, therefore, should encourage a depressed attorney to seek professional help from available resources such as the Lawyer Assistance Program.

Depressed and potentially suicidal individuals often exhibit changes in their mood, appetite and energy level, which can be noticed by colleagues, friends and family members and should be a matter of concern. Common symptoms of depression include:

- feelings of hopelessness;
- restlessness and irritability;
- fatigue or weakness;
- inability to concentrate;
- loss of appetite; and
- diminished interest in sex and recreation.

Treatment usually consists of psychotherapy, medication or a combination of the two. Often, people with depression will begin to see positive results within a month of beginning treatment.

## **Personal and career counseling**

Free short-term counseling (up to three sessions) is available through the LAP for any member of the State Bar who is experiencing stress, burnout or depression that is negatively impacting their work performance. Similarly, attorneys facing career challenges may avail themselves of free career counseling through the LAP. To access either of these free services, please call (800) 341-0572. The confidentiality of attorneys accessing these resources is protected by statute.

## **Seeking help for a troubled friend?**

Clearly, legal professionals need an assistance program specifically geared to the unique pressures of legal practice and to the unique recovery support needs of attorneys. The Lawyer Assistance Program is that resource for all legal professionals licensed by the State Bar. Call toll-free 877-LAP 4 HELP (877-527-4435) for confidential assistance for yourself, a friend, colleague or a family member.

- *Richard Carlton is in charge of program development, research, MCLE presentations and short-term counseling for the Lawyer Assistance Program.*

## **Certification**

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- This self-study activity (including the enclosed audio tape) has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of one hour in the prevention of substance abuse.
- The State Bar of California certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.