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The Malpractice Time Bomb: Stress and Substance Abuse

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ISBA Mutual has noticed a disturbing increase in the number of legal malpractice claims associated with lawyers dealing with stress or substance abused issues. Even more disturbing, these claims are coming from small to mid-sized firms where problems, theoretically, should be easier to identify. Alcohol is the number one substance abuse problem among lawyers followed by the abuse of prescription drugs. Many jurisdictions have discovered that there is a correlation between alcoholism and malpractice and discipline. Almost a third of the lawyers disciplined by the ARDC have a substance abuse or mental impairment problem.

Example

Alan practiced law for 20 years and is a named partner in his law firm. Every afternoon he goes to lunch with friends from another law firm. They all have at least three and sometimes five alcoholic drinks. For a while, Alan can function and perform his work well. Over time, his drinking increases, and he fails to return client calls; misses court dates; ignores discovery requests; and shows up late or not at all for firm meetings. His billings have dropped, and he is under increased financial pressure. He starts to transfer funds from the firm trust account into his personal account so he can stay afloat. Everyone in the firm knows Alan has a drinking problem. They try to confront him by pointing out the numerous grievances and threats of lawsuits against the firm, but Alan maintains that he does not have a problem.

Evaluation of Firm Culture

The tragedy of the troubled or problem lawyer is usually compounded by the inaction of the firm. Yet in most cases, the firm could have taken measures to detect and deal with the problem.

Improve communication among firm members

Does your firm convey an open-door policy to its lawyers? Would an associate or fellow partner feel comfortable approaching a partner to discuss a problem? Too many lawyers today view partnership as a purely economic relationship and feel no sense of loyalty to one another. These are the firms in which dysfunctional or troubled lawyers have no place to turn. They are also the law practices in which dishonest and incompetent lawyers flourish.

Your firm can foster an atmosphere of openness and communication by meeting on at least a monthly basis. Ask your coworkers for advice on sticky files, update one another on new statutes and case law, and discuss firm-wide procedures for servicing clients. You may also consider appointing a fair-minded and well-respected partner as an ombudsman to whom other lawyers can turn when problems develop.

Practice workload management

Stress can push predisposed lawyers into clinical depression or other mental illnesses such as anxiety disorders. To reduce stress and the incidence of depression in your office, evaluate your firm's workload practices. Is your firm measuring its members' worth based solely upon the

number of hours worked or the quantity of open files? Find out what each lawyer's average caseload is and then set limits on the number of files or cases that may be handled at one time.

In addition, take an honest look at the firm "culture." Are firm members encouraged to take an hour off to go to their children's school activities - or are they made to feel guilty when they do? Consider instituting a policy that **requires** lawyers to take vacation. Many firms find that such an approach keeps their lawyers fresh and enthusiastic.

Firms should also be sensitive to and accommodate a lawyer who is wrestling with the added stress of a personal crisis. During this period, try to lessen the work responsibilities of the affected lawyer. Everyone has a breaking point; don't wait until your colleagues reach theirs.

Institute uniform and strict office procedures

Firm-wide procedures ensure that all lawyers are maintaining the same quality and standards in their practice. As an illustration, it should be impossible for a lawyer to accept a new client and obtain a new file number without following the firm's procedures. It is also recommended that firms establish checks and balances for monitoring all money flowing in and out of the firm. For example, is more than one signature required on checks for significant amounts? Does more than one partner review the books periodically?

Use peer review and client satisfaction surveys

Firms can monitor the quality of their legal work by implementing a peer review system (see the chapter [Reducing Risk of Substantive Errors](#) for more on implementing a peer review system). These reviews not only uncover the incompetent lawyer but also provide you with early warning of a lawyer who is neglecting matters because of depression or substance abuse.

Client satisfaction surveys may also be helpful in identifying problem lawyers. Just send a survey to each client for whom work has been performed over the past 12 to 24 months. The survey should ask the client to rate the firm's members anonymously on a variety of topics, such as timeliness, cost, courtesy, responsiveness, and result.

Know the signs for substance abuse and common mental illnesses such as clinical depression

According to the [Lawyers' Assistance Program](#), the following are some noticeable symptoms of substance abuse:

- tardiness;
- missing deadlines, neglecting mail or failing to keep appointments or answer phone calls; and
- defiance, impatience, intolerance, or impulsiveness.

There are several symptoms associated with clinical depression that can also be detected by astute coworkers. They include:

- tardiness or chronic tiredness;
- restlessness or irritability;
- difficulty concentrating, remembering, or making decisions; and
- persistent sad, anxious, or empty moods.

Where to Go for Help

Seek help from professionals in cases of mental illness or substance abuse

There are numerous resources available if one of your lawyers is struggling with a mental illness or substance abuse problem. Two good places to start are the Mental Health America of Illinois at www.mhai.org and the Lawyers' Assistance Program at www.illinoislap.org. Lawyers' Assistance Program is dedicated to assisting lawyers with both chemical dependency and mental health problems. As a concerned member of a firm, you can [contact them confidentially](#) and discuss the options for assisting the troubled lawyer.

You can also check whether your group major medical or disability insurance policy has an employee assistance program (EAP). EAPs usually provide employees and their families with a hotline to seek assistance for a wide variety of personal problems, including depression and drug and alcohol abuse. Under these programs, both the concerned coworker and the troubled lawyer can reach out independently and confidentially for advice.

Remember that mental illness and substance abuse are treatable, particularly if detected early

Don't give up on a fellow lawyer without a fight. Mental illnesses such as clinical depression and substance abuse are treatable, particularly if recognized and dealt with at an early stage. Watch for warning signs and seek help before the lawyer's behavior causes irreparable damage.

Help is on the way

Since July 1, 2017, lawyers in Illinois have been required to complete at least one hour of continuing legal education regarding diversity and inclusion and at least one hour regarding mental health and substance abuse to satisfy their Professional Responsibility CLE obligations. Attending these programs will help lawyers learn what they can do and how lawyers can help each other.

Stress and Substance Abuse Do's and Don'ts

Do...

- ✓ Use peer review and client satisfaction surveys.
- ✓ Remember that mental illness and substance abuse are treatable, particularly if detected early.

Don't...

- ⊗ Ignore a troubled lawyer.
- ⊗ Create a culture that punishes lawyers who take time off.

To download our entire guide, ***The Fundamentals of Loss Prevention for Lawyers*** or to access Sample Letters & Forms, visit our website www.isbamutual.com.

Disclaimer

This booklet includes loss prevention techniques designed to reduce the likelihood of being sued for legal malpractice. It is not the intent of these materials to suggest or establish practice standards or standards of care applicable to a lawyer's performance in any given situation. Rather, the sole purpose of these materials is to assist lawyers insured by ISBA Mutual in avoiding legal malpractice claims, including meritless and frivolous claims. To that end, the intention is to advise lawyers insured by ISBA Mutual to conduct their practice in a manner that is well above the accepted norm and standards of care established by substantive legal malpractice law. The recommendations contained in these materials are not necessarily appropriate for every lawyer or law firm and do not represent a complete analysis of each topic.

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