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ABA CoLAP Senior Lawyer Assistance Committee

Working Paper on Cognitive Impairment and Cognitive Decline

Introduction

CoLAP, the American Bar Association's Commission on Lawyer Assistance Programs, is dedicated to assisting the legal community with addiction and mental health issues and supporting state Lawyer Assistance Programs. In response to reports of increasing calls regarding older lawyers and judges from lawyer assistance programs around the country, CoLAP created a Senior Lawyer Assistance Task Force in 2008 and turned the Task Force into a Committee in 2009.

CoLAP's creation of a committee dedicated to senior attorney issues does not mean that CoLAP believes that qualifying as a senior attorney necessarily indicates impairment. However, a range of conditions occur more frequently in seniors--including cognitive impairment and dementia, grief from loss of a spouse, hearing loss, vision loss, and multiple other health conditions--that together heighten the risk of impairment in this attorney group. The Senior Lawyer Committee was formed to investigate how lawyer assistance programs could effectively assist with these issues.

Over the years our key areas of focus have been:

- raising awareness of cognitive and medical conditions affecting the senior attorney, and of the availability of assistance;
- assisting law firms, bar associations, and individuals in handling cases of cognitive decline or impairment in a manner that protects the public and the dignity of the senior (or not senior) lawyer or judge;
- providing education and resources to assist legal professionals with the transition to retirement; and
- providing education and resources on best practices in planning for unanticipated absences from the practice.

We have collaborated with the CoLAP Judicial Assistance Initiative, the Tort Trial & Insurance Practice Section of the ABA, the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers in addressing these mutual concerns. We have recently begun discussions with the National Academy of Neuropsychology (NAN), the nation's largest professional group of practicing neuropsychologists, to see what we can do collaboratively to assist lawyers and judges dealing with issues of cognitive impairment. We hope to continue our collaboration with these entities and develop new relationships with others as well.

This article was written by members of the Senior Lawyer Assistance Committee, with assistance from NAN and its Policy and Planning Committee, with the hope of raising awareness of cognitive decline in legal professionals and encouraging lawyers and judges to take action to protect clients, the profession, and their colleagues should they encounter such a situation. We hope that you find it helpful.

I. Signs and Symptoms of Cognitive Decline

The degree to which individuals exhibit normal cognitive changes during aging varies, with some people maintaining excellent cognitive functioning throughout life, and others having declines severe enough to significantly interfere with daily functioning. Two key concepts in understanding these different trajectories are *normal cognitive aging* and *cognitive disorders of aging*.

Normal Cognitive Aging

The brain and central nervous system, like other organ systems in the human body, undergo normal age related decline over time. Thus age based changes in cognitive abilities are an expected part of normal aging. For example, declines in reaction time and processing speed can emerge as early as the late 20's; other cognitive functions show decline in later decades. In general, with increasing age, information tends to be processed more slowly, retrieval of information is less accurate and efficient, learning new information is more challenging, and the ability to multi- task and carry out complex, novel problem solving declines. In contrast, other abilities, including vocabulary, breadth of general knowledge, emotional functioning, and (we hope) wisdom, can remain stable or even improve over time into the upper decades.

Cognitive Disorders of Aging

Cognitive disorders of aging are biologically based diseases that cause abnormal cognitive changes that are not age expectable and that are superimposed on normal cognitive aging. One common cause of abnormal cognitive decline is cerebrovascular disease, which includes small and/or large strokes, microvascular ischemic changes, chronic inflammation, and risk factors like diabetes, insulin resistance, high blood pressure, high cholesterol, and obesity. Other causes including history of traumatic brain injuries, excessive alcohol and drug use, and low levels of cognitive activity can also be associated with poorer cognitive functioning as we age. Many of these risk factors and conditions are potentially treatable, highlighting the importance of accurate diagnosis.

The most common cognitive disorders of aging, however, are neurodegenerative diseases that involve progressive deterioration of the brain over time. Neurodegenerative diseases generally have an insidious onset and gradual progression, and are associated with protein-specific neuropathological changes. The most common neurodegenerative disease is Alzheimer's disease, but Parkinson's disease, diffuse Lewy body disease, and frontotemporal dementia are also fairly common. When they present in their typical form, each neurodegenerative disease is associated with a different pattern of cognitive and behavioral symptoms. Short term memory impairments are prominent in early Alzheimer's disease, whereas problems with multi-tasking and attention are common cognitive changes in Parkinson's disease, and behavioral control and language skills are common deficits in early frontotemporal dementia. Importantly, we now know that neurodegenerative brain changes can begin years before symptoms emerge or become obvious and debilitating. Consequently, some very mild declines in memory, for example, could reflect the symptoms of incipient Alzheimer's disease. It is only later in the progression that the memory, language, behavioral, spatial, and other effects of the disease are severe enough to cause dementia. Dementia is a clinical term and construct used to describe a decline in cognitive and behavioral skills that is severe enough to interfere with daily functioning and the ability to live independently. Dementia is a significant clinical finding insofar as it strongly implies that an individual is disabled in key aspects of everyday life and may no longer be able to carry out work functions.

Dementia: It is important to emphasize that dementia is a syndrome and not a specific disease. It is used as a general term to identify or label a decline in mental ability that is severe enough to interfere with daily functioning **and the ability to live independently**.

Numerous conditions can potentially cause dementia besides neurodegenerative diseases, including brain tumors, brain injuries, nutrition deficiencies, infections, drug reactions and thyroid related disorders. Some of these dementias may be reversible but many are not.

Age, family history, genetics, lifestyle, diseases, and accidents are the most common risk factors for all type of dementias. The greatest known risk factor for Alzheimer's is advancing age. The age at onset is typically after 65, and the likelihood of developing Alzheimer's doubles every five years after the age of 65. After age 85, the risk reaches nearly 50%.

II. **Assessment of Cognitive Impairment and Cognitive Decline by LAP Professionals**

Lawyers and even LAP Professionals generally do not have the requisite training and expertise to formally assess and definitively diagnose cognitive disorders and associated impairment and decline. Formal assessment/evaluation of cognitive impairment and cognitive decline is referred to specialists in the fields of psychology, psychiatry, and neurology.¹ LAP professionals and lawyers, however, need to be informed and to have available a mental checklist of the 'red flags' that serve to alert us to the possibility that a colleague's cognitive abilities and associated professional abilities have dropped below the level that is required to practice law effectively.

In 2005, the American Bar Association Commission on Law and Aging and the American Psychological Association published *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers*. The lawyer's handbook discusses many concepts relevant to the assessment of the senior attorney with cognitive impairment. In particular, the CoLAP Senior Lawyer Assistance Committee has adapted the *Capacity Worksheet for Lawyers* contained in the handbook to serve as a worksheet and guide to LAP professionals and other concerned colleagues called on to assess or assist a lawyer exhibiting signs of cognitive impairment or cognitive decline.

¹ Neuropsychologists, geropsychologists, neuropsychiatrists, geriatric psychiatrists, and neurologists.