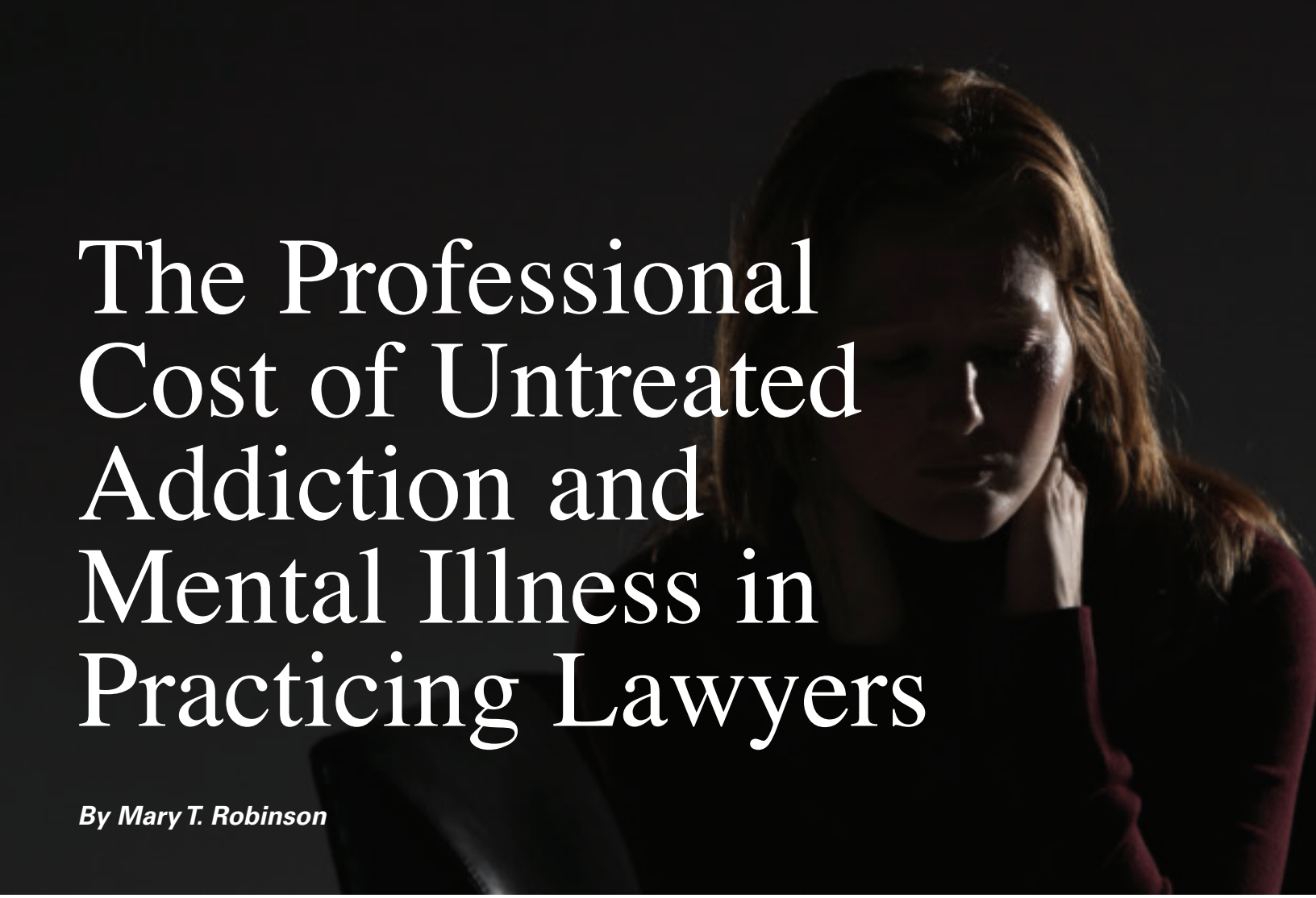

The Professional Cost of Untreated Addiction and Mental Illness in Practicing Lawyers

By Mary T. Robinson

As Americans and as lawyers, we tend to believe that the personal problems or illnesses of colleagues are just that—personal. We believe in the individual's right to privacy, and we construct laws and practices that protect privacy. We consider it a matter of respect not to inquire about a colleague's personal life unless the colleague invites the inquiry.

That perspective plays an ironic role in allowing mental afflictions, and, in particular, addictive illness to take hold and progress, with dramatically destructive results to the afflicted lawyers and those with whom they interact, including colleagues and clients. Intrinsic to addictive illness is the ability to deny reality as others see it, and those afflicted tend to be surrounded by family, friends and colleagues who protect them from reality, both by taking actions that save them from the consequences of their behavior and by assiduously avoiding naming what seems wrong. Treatment professionals use this analogy: there is an elephant in the living room and everyone pretends it is not there, even as they go through increasingly contorted maneuvers to step around it and clean up its messes.

The reality is that lawyers are almost three times more likely than the general population to suffer from depression and twice as likely to suffer from alcoholism.[1] Lawyers are addicted to illegal drugs, lawyers are gambling and sex addicts and lawyers suffer from serious mental illness, such as bipolar disorder. When these illnesses are not treated, they almost always adversely affect the lawyer's capacity to practice law.

Disciplinary Impact

At least 25 percent of the lawyers who face formal disciplinary charges are identified as suffering from addiction or other mental illness.[2] Many others belong in that category, but are not counted, ironically, because they are exhibiting symptoms of disease. A surprising number of lawyers default and lose their licenses without ever answering or appearing. Some of those might be making a rational decision to abandon the practice of law and move onto something else, but many more defaulters are immobilized by depression or reduced to shadows of their former selves by addiction. Plus there are many who appear and defend, but they do so in the fog of denial, a unique mix of honest confusion about why life feels out of control and active refusal to acknowledge reality. In some, denial tends to be defiant and off-putting, an aggressive shield against allowing other people to see the symptoms of addiction. For others, the sincerity of the confusion is contagious, and observers are not inclined to question what is going on beneath the surface.

Statistics about addiction and mental illness in discipline cases need to be understood as rather fluid. They can include what has been professionally diagnosed, what the respondent reports, and what observers see as obvious indicators. Even where there has been a professional diagnosis, people can suffer from overlapping addictions and other illness, and when that is the case, it may be years into treatment before each contributing

cause is identified. With that caveat, the illnesses most often identified in the course of disciplinary proceedings are depression and alcoholism. Either standing alone or in tandem, they account for well over half of the cases in which an impairment of some sort has been identified. Addictions to prescription or illegal drugs, and gambling, sex and other behaviors, sometimes along with alcohol addiction or depression, are identified in more than a third of the cases. The more discreet categories of bipolar illness and schizophrenia account for only a small, though dramatic, segment of the cases.

The Disease Model

The conditions which are the focus of this article are all identified as Axis I mental disorders in the Diagnostic and Statistical Manual of Mental Disorders, *Fourth Edition*, published by the *American Psychiatric Association*. An exposition of the medical science on these disorders is beyond the scope of this article and the expertise of the authors. But a few observations on depression and addiction can be helpful.

New technology and understandings are empowering scientists to identify the biological underpinnings of mental illness. Depression has been linked to a shortage of neurotransmitters (serotonin, norepinephrine and/or dopamine) in the brain.[3] This shortage can be caused by a combination of factors. Some who suffer from depression have a genetic predisposition. Some have experienced difficulties, such as financial hard times or marital problems that trigger a depressive episode lasting more than several weeks. Some have endured trauma, which, research shows, may cause permanent functional and structural damage to the brain.[4] Whatever the cause, anti-depressant drugs often help restore the chemical balance and allow the person to function more effectively.[5]

PET (Positron Emission Tonometry) scans of the brains of people who suffer from depression show significantly reduced brain activity, as if the brain were in a state of hibernation. Mental concentration is impaired.[6]

Addictions, whether to alcohol or other drugs, are associated with disruption of brain chemistry. Certain drugs (including alcohol) affect the brain's communication system, interfering with the way nerve cells receive and process information.[7] Drugs of abuse target the brain's reward system by flooding circuits with dopamine, a neurotransmitter present in regions of the brain that regulate movement, emotion, cognition, motivation and feelings of pleasure.[8] The brain has inhibitory systems that can mute the stimulation of the messages set off by drugs. But, in addicts, the natural damping circuit, called GABA (gamma-aminobutyric acid), appears to be faulty.[9] Over-stimulation by the flood of dopamine produces euphoric effects, which the addict seeks to repeat again and again, setting up a cycle of uncontrollable craving.[10] Over time, the flooding causes the brain to produce less dopamine or to reduce the number of receptors that can receive and transmit signals, and that reduces the addict's ability to experience pleasure. Eventually, the addict has to take drugs just to bring dopamine function back up to normal, and it takes progressively larger and larger amounts of the drug to create a dopamine high.[11]

For those who are addicted, activity in the areas of the brain that control reasoning and judgment is reduced, leaving the addict impulsive and often unable to follow a rational course.

Some people have a genetic predisposition to addiction, but anyone can become an addict if sufficiently exposed to drugs or alcohol.[12] Moreover, behaviors, from gambling to eating to sex, can become addictions, and research is showing similar patterns in brain activity in those afflicted with what the medical profession refers to as these behavior-based "process" addictions.

Although there are pockets of those who disagree, most professionals accept that treatment for alcohol or drug dependence requires total abstinence from all intoxicants, and most prescribe long-term participation in Alcoholics Anonymous (AA), Narcotics Anonymous (NA) or some other 12-step program. Research shows that after a period of abstinence, some areas of brain activity can return to pre-drug states, though the extent of recovery and the time it will take to occur differs depending on the drug(s) that were abused. There is growing evidence that supports a 90-day rehabilitation model, which AA came to embrace through experience (new members are advised to attend a meeting a day for the first 90 days) and which is, or at least used to be, the duration of a typical stint in a treatment program. Research is showing that for many drugs, the brain resets itself and shakes off the immediate influence of the drug within that time frame, and a gradual re-engaging of proper decision-making and analytical functions in the brain's prefrontal cortex will be seen after an addict has abstained for at least 90 days.[13]

The Fallout: What Impaired Lawyers Do to Become Disciplinary Cases

Lawyers who suffer from depression can become overwhelmed by seemingly routine legal or administrative tasks, sometimes literally unable to bring themselves to look at files, to return phone calls or to open mail (including letters from the discipline agency). Eventually, clients become frustrated and start making complaints because they cannot get information or action. Once discipline agencies start requiring explanations, they often find cases where statutes of limitation have passed or where clients have been defaulted because of the lawyer's inability to act. In some of those cases, they will find that the lawyers misled the clients about what they had or had not done in the case. One of the more painful recurring patterns is known by some disciplinary counsel as "phantom settlement" cases, where, rather than confronting the truth, lawyers will tell clients that a case has been filed and settled and then they actually pay the "settlement" out of their own funds. Of course, once those clients learn what really occurred, nothing can convince them that they have not been cheated out of the full value of what they would have gotten if the lawyer had handled the case properly.

Lawyers who are addicted to alcohol or other drugs eventually become so focused on drinking or using that nothing else matters. They spend more and more time and resources obtaining, using and recovering from using alcohol or another drug of choice. Addicts reduce or give up entirely what they once considered important social, occupational or recreational activities in order to drink or use. They may try time and again to cut down or control consumption, but once that first drink or hit is taken, they are incapable of not moving on to the next and the next. Yet, no matter how many times they fail, they maintain a

belief that the next time they will be able to do it. In the throes of impaired reasoning and judgment and uncontrollable cravings, addicts do things inconsistent with their own long-held values, ethics and beliefs.

Lawyers who are alcoholics or drug addicts neglect cases because they are not thinking clearly; they come to the office in a hangover and they cannot ignore the craving for a drink or a fix to get through the day. They take retainers they will never earn, convincing themselves that they will be able to get it together with one more valiant try, or they dip into funds they are holding for clients to stave off collectors and to feed their habits. They lie to cover omissions or missed due dates. They come to court late and unprepared and insult judges and opponents. They sometimes commit crimes. Some do each and every one of those things many times over.

What Colleagues Need to Know

Addiction often builds slowly, and it can be difficult to see the changes that signal that a colleague is in trouble. The same can be true for depression. Add to the equation our professional reluctance to interfere in a colleague's personal life or to question a partner's capacity or integrity, and it becomes fairly clear how easily we can slip into inertia, blind to the signals that our own professional life may be endangered because our colleague has lost the capacity to practice diligently or ethically.

No one wants to start pointing fingers when a partner takes a few long lunches, or when those lunches extend later and later. No one wants to draw any conclusions when a partner becomes more and more irritable, and then angry, and then explosive, especially as the day wears on. Maybe it's not fair to be judgmental when a partner has failed to come through on a commitment. Why worry that he has some clients who are complaining? Why doubt when she says that her secretary forgot to put something in the mail or the other side never served her or her computer crashed?

It is not that any one of those behaviors should cause us to wonder. Instead, it is the recognition that several things feel differently and out of character.

Sometimes a clear signal that something is wrong is how we ourselves feel toward the colleague. When someone we have known to be trustworthy starts to lie to us, we will not believe it at first. And then we may get angry or hurt or disapproving or all of those things. After we step up to help someone out of one too many problems, we may start to feel used. Or we find ourselves becoming resentful when, having once enjoyed frank and comfortable conversations, we start to recognize that interactions have become superficial and uneasy, with topics that might bring any failings into the open having become absolutely off-limits.

What may be most difficult, particularly about addiction, is that it is decidedly and inherently irrational. All of those superior reasoning skills that serve us so well in our work as lawyers are not particularly helpful, and sometimes those skills actually get in the way of understanding what is going on.

So why even try? One reason is that many of us are legally accountable for the malfeasance of our colleagues, and stand to lose money and reputation if we do not recognize what is going on before the damage has been done. Another reason is that addiction and depression are terrible places to be, and if the person who is afflicted happens to be someone we care about, we will not want to look the other way. Depression leads to suicide, as do addictions. Addiction is a progressive disease that is eventually fatal.

Most states have lawyer assistance programs, with staffs and volunteers who are well versed in the symptoms and treatment options for addiction and other mental illness. Most of the programs are protected by a privilege that allows staff members and volunteers to confer confidentially with lawyers who come for help because they themselves have problems or because they are concerned about a colleague. A call to a lawyer assistance program can yield confirmation of what appears to be wrong, advice about what else to look for or referrals to information or professionals that might help decide whether or what concrete action is called for. Some lawyer assistance programs and many treatment centers provide help in arranging assessments or interventions that could get the afflicted lawyer to appropriate treatment.

Endnotes

1. Debra Cassens Weiss, "Lawyer Depression Comes out of the Closet," ABAJ, *Law News Now*, December 13, 2007, *http://www.abajournal.com/weekly/lawyer_depression_comes_out_of_the_closet.*
2. See, e.g., 2003 Annual Report of Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, *http://iardc.org/AnnualReport03/2003annual_report.html, Section IV.* Study of Demographic Data for Lawyers Disciplined Over Five-Year Period, chart entitled "Impairments Identified for Attorneys Sanctioned 1998–2002, By Race of Respondent") and 2005 Annual Report of Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (*http://iardc.org/2005AnnualReport.pdf, charts 20–22, pps. 21- 23*).
3. Karl Hempel, M.D., "Depression—What You Need to Know," *The Health Gazette, http://www.tfn.net/HealthGazette/depress.html.*
4. Id.
5. Id.
6. Id.
7. Michael D. Lemonick, "How We Get Addicted," *Time*, July 5, 2007, *http://www.time.com/time/magazine/article/0,9171,1640436,00.html, p.2.*
8. National Institute on Drug Abuse, The Science of Drug Abuse and Addiction, Drugs and the Brain, *http://www.drugabuse.gov/scienceofaddiction/brain.html.*
9. Lemonick, p. 2.
10. National Institute on Drug Abuse, The Science of Drug Abuse and Addiction, Drugs and the Brain, *http://www.drugabuse.gov/scienceofaddiction/brain.html.*
11. Id.
12. Lemonick, p. 1.
13. Lemonick, p. 3.

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