

North Carolina Lawyer Assistance Program

“Lawyer Impairment & How to Get Help”



NCLAP
NORTH CAROLINA
LAWYER ASSISTANCE PROGRAM

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Confidential Help for the Lawyers of North Carolina



What Is Chemical Dependency?

Chemical dependency is a leading health problem and cause of death in this country. The National Institute on Alcohol and Alcohol Abuse estimates that 10% of the population of the United States are alcoholics or otherwise chemically dependent. Chemical dependency within the legal profession may be as high as 20% of the population. Don't let yourself or someone you know fall into these statistics without the chance for assistance. Confidential help is available through the North Carolina State Bar Lawyer Assistance Program.

Facts About The Problem

Chemical dependency is not the result of a moral defect or deficiency of character, but is a chronic, progressive, and irreversible disease. If excessive drinking or drug use continues, it is fatal. Death may actually come through suicide (25% of all suicides are alcohol-related) or in the form of heart failure, liver disease, bleeding ulcers, cirrhosis, gastrointestinal disorders, or any one of a number of other ailments, but death will be a direct consequence of the excessive and prolonged intake of alcohol. Not only is substance abuse a physical health problem, it also alters perception and thinking. Such changes produce certain predictable behavior patterns such as failing to keep appointments, failing to return client calls, missing deadlines and other manifestations of poor judgment that undermine a lawyer's ability to fulfill the heart of a lawyer's ethical obligations to his or her clients and the public.

How Does It Work?

Fortunately, chemical dependencies are treatable. Alcoholism, for example, may readily be arrested and its ill effects completely alleviated through total abstinence from mood altering substances. If you or someone you know has a substance addiction, the North Carolina State Bar Lawyer Assistance Program can help. The Committee was formed in 1979 to help chemically dependent lawyers in the state of North Carolina. The Committee is authorized to receive in confidence information from any source concerning a lawyer thought to have a substance abuse problem. If, following a discreet and confidential investigation, a careful evaluation of the facts reveals that the lawyer is impaired, the Committee may make a recommendation to the lawyer concerning sources of help. The Committee assists individual lawyers in need of guidance and support in dealing with a potentially fatal condition so that they may return to happy and productive lives.

Confidential Help for the Lawyers of North Carolina



Who Works For LAP?

LAP has a full-time professional director, an assistant director and two clinicians on staff, all of whom are trained in chemical addictions and mental health issues and a full-time professional assistant director who is trained in chemical addictions and mental health. The Director is also a lawyer who practiced for years. Much of the work of the LAP program is performed by lawyer volunteers who are recovering alcoholics and other people who have a deep and abiding concern about alcoholism as a result of personal or professional experience. In order to participate in LAP, these volunteers receive training in protecting confidentiality and in the most effective ways to assist the chemically dependent lawyer. In addition, the LAP program has a ready range of confidential resources to which it can refer lawyers in need.

Who Will LAP Help?

Of course, LAP will help any North Carolina lawyer who believes he or she may be suffering from chemical dependency. While LAP does not provide any direct assistance to family members, LAP is ready to provide information on where to go for help to the spouse or children of a chemically dependent lawyer as well as the lawyer's partners or associates. Assistance to family members is often critical because alcoholism and chemical dependence are family problems. For the chemically dependent person, the craving for alcohol or drug subverts the normal human pattern of interpersonal relationships. This causes chronic disruption and distress to the healthy functioning of the family. LAP can help family members find the resources they need for themselves. A return to health for the impaired lawyer is greatly enhanced by a family that has recovered its own balance.

Confidentiality

If you call to seek help for yourself, your inquiry is confidential. If you call as the spouse, child, or friend of a lawyer whom you suspect may have an alcohol or drug problem, and needs your help, your communication is also treated confidentially and never related to the lawyer for whom you are seeking help without your permission. All inquiries, questions and conferences are privileged and held in the strictest confidence. Under Rule 1.6 of the Rules of Professional Conduct of the North Carolina State Bar, the attorney/client privilege is applied to communications between a lawyer seeking assistance and LAP. In order to assure this high degree of trust and confidence, LAP is, by rule of the State Bar which has been approved by order of the North Carolina Supreme Court, entirely separate from any ethics or disciplinary committee of the State Bar.

SIGNS OF LAWYER IMPAIRMENT

The following outline includes those symptoms that predictably suggest lawyer impairment. Note, though, that the symptoms may vary in nature according to the type of problem, and in severity, according to the stage of problem development.

A. Attendance:

- Returns late from lunch or fails to return.
- Leaves early on a routine basis or amasses a string of unpredictable absences.
- Fails to keep scheduled appointments.
- Takes frequent days off without good reason.
- Fails to appear at depositions or court hearings.

B. General Behavior:

- Persistent complaints of not feeling well.
- Deterioration of personal appearance or hygiene.
- Withdrawal.
- Overreacts to real/imagined criticism.
- Becomes grandiose, aggressive, belligerent.
- Large weight gain or loss.
- Insomnia or sleeps all the time.
- Unable to retain (or fires) secretary, bookkeeper or associate lawyers.
- Drinks or uses drugs regularly at noon.
- Drinks or uses drugs during office hours.
- Appears under the influence of or being in an impaired condition during court appearance or deposition.
- “Needs a drink or to use drugs” when something good or bad has happened.
- Loses control at social gatherings when professional decorum is called for.

C. Job Performance:

- Neglects to process mail promptly (and does not return phone calls).
- Performs poorly in the afternoons.
- Fellow workers complain.
- Misses deadlines for performance, such as allowing the statute of limitations to expire.

ARE YOU AN ALCOHOLIC?

To Answer this question ask your self the following questions and answer them as HONESTLY as you can.

	Yes	No
Do you lose time from work due to drinking?	_____	_____
Is drinking making your home life unhappy?	_____	_____
Do you drink because you are shy with other people?	_____	_____
Is drinking affecting your reputation?	_____	_____
Have you ever felt remorse after drinking?	_____	_____
Have you gotten into financial difficulties as a result of drinking?	_____	_____
Do you turn to lower companions and an inferior environment when drinking?	_____	_____
Does your drinking make you careless of your family's welfare?	_____	_____
Has your ambition decreased since drinking?	_____	_____
Do you crave a drink at a definite time daily?	_____	_____
Do you want a drink the next morning?	_____	_____
Does drinking cause you to have difficulty sleeping?	_____	_____
Has your efficiency decreased since drinking?	_____	_____
Is drinking jeopardizing your job or business?	_____	_____
Do you drink to escape from worries or trouble?	_____	_____
Do you drink alone?	_____	_____
Have you every had a loss of memory (blackout) as a result of drinking?	_____	_____
Has your physician ever treated you for drinking?	_____	_____
Do you drink to build up your self-confidence?	_____	_____
Have you ever been to a hospital or institution on account of drinking?	_____	_____

If you have answered YES to any one of the questions, there is a definite warning that YOU MAY BE AN ALCOHOLIC.

If you have answered YES to any two or more of the questions, the chances are that you ARE AN ALCOHOLIC.

THE PREVALENCE OF IMPAIRMENT

- 18% of lawyers suffer from substance abuse (*Washington Survey*)
- 33% of lawyers suffer from significant mental health issues (*Washington Study*)
- 19 - 37% of lawyers suffer from depression. Of these, 25% suffer *physical* symptoms of depression or anxiety (*Washington and North Carolina Studies*)
- Of 28 occupations surveyed, lawyers are most likely to suffer depression and 3.6 times more likely to suffer depression than the average person (*1991 Johns Hopkins University study*).

THE RELATIONSHIP BETWEEN LAWYER IMPAIRMENT AND ERRORS IN JUDGMENT

- 40 - 75% of discipline cases involve a chemically dependent or mentally ill practitioner (*Illinois Survey*)
- 80% of Client Protection Fund cases involve chemical dependency or a gambling component (*Louisiana Study*)

OREGON BAR SURVEY

- An Oregon Bar Survey of Incidents of Malpractice comparing those who had successfully used the LAP versus the Bar at large. Those using the LAP were less likely to commit malpractice.

**North Carolina State Bar's Model Law Firm
Alcohol and Drug Policy**

The firm regards alcoholism and drug addiction as illnesses and desires to assist employees suffering from such illness to obtain effective treatment.

The firm regards the unauthorized possession and distribution of controlled substances as crimes and will discipline any employee proved to be involved in such a crime whether or not such employee is addicted to drugs.

The impairment of any employee's performance due to drug or alcohol addiction is deemed to be the firm's business, not a reserved aspect of one's private life. It is the firm's policy to encourage and offer qualified medical assistance to any employee who appears to the firm management to suffer from such illness.

No employees will be disciplined solely for impairment due to any illness so long as the employee cooperates with a qualified treatment program agreed to by the firm and the employees. The employee's choice of treatment will be accepted only if approved by a specialist retained by the firm after consultation with the employee's personal physician. Any treatment undertaken in accordance with this policy shall be entirely confidential and no disclosure by an employee to any treatment personnel will be reported to the firm nor will any such disclosure be available to any legal authority whatever except in accordance with the requirements of applicable law.

The firm will name a supervisory employee as administrator of this policy and as the firm's representative in all matters pertaining to its execution. This person shall be a firm liaison with the LAP Committee, no other person within the firm shall be informed of any consultation or referral under this policy without the consent of the affected employee except as necessary to complete the ongoing work of the employee.

North Carolina Model Law Firm Alcohol and Drug Policy Explanatory Statement

A law firm desiring to provide appropriate assistance to employees suffering from substance abuse or addiction should consider doing three things: (1) adopt a policy, (2) implement the policy, and (3) educate the members and employees of the firm.

The North Carolina State Bar has recommended to its membership a law firm policy which recognizes that alcoholism and other forms of drug addiction are treatable illnesses; however, the policy condones neither impaired job performance nor illegal conduct.

The model policy provides for the establishment of an understanding and supportive atmosphere within which lawyers and employees may seek personal help or express concern about a colleague or other employee.

The two major obstacles to reaching out for help for oneself or another are based on the fear of being punished and the fear of causing harm to one's reputation.

These can be overcome by express recognition of the medical model of addiction and the establishment of appropriate safeguards as to confidentiality.

The firm's partners should fully understand the model policy before adopting it. Representatives from the **LAP** Committee are available to assist them in its understanding.

It is very important for the partners to understand that the firm should not ignore impaired job performance. Work related problems are a major indicator that "something" may be wrong. If that "something" is alcohol or drug related, then trying to protect the employee from the consequences of his/her own action is harmful, not helpful to the employee. This is called "enabling" and it is the direct result of not understanding the disease process.

Existing policies or Employee Assistance Programs (EAP) should be reviewed and any real or potential conflicts should be identified and resolved.

The partners need to agree on who will handle these matters and establish appropriate safeguards for confidentiality.

They may wish to retain an independent provider of EAP services. Law firm sponsored medical insurance needs to be reviewed to verify what is covered by the insurance before a need arises.

Once a policy is adopted, the firm should announce it and visibly post it. **LAP** is available to conduct educational programs, at no charge, for the benefit of the firm's lawyers and employees.

These programs discuss the prevalence and impact of the problem in the workplace, explain the progressive and the harmful nature of the disease of addiction, teach how to identify job related symptoms, explore how supervisors and co-workers enable sick colleagues, and explain how to appropriately respond to a possible problem using the firm's policy.

Always keep in mind that **LAP** is a ready and willing resource to help your firm, using recovering lawyer volunteers and referral to treatment professionals. **LAP** exists to serve and save lives.

Before and After

The following personal story of a North Carolina lawyer is presented anonymously in the spirit of Alcoholics Anonymous, which seeks to avoid pride in recovery.

I didn't consider alcohol as a remedy for my unhappiness and depression in high school. I was introverted, although active in school activities, but I never felt like I belonged in social situations. While my classmates were having fun outside the classroom, I was at home reading a book.

I discovered alcohol when I was eighteen and a sophomore at UNC Chapel Hill. Looking back, I think it saved my life and I can recall regretting that I had not discovered it sooner. I could not imagine any ill effects from this elixir. Even then I drank alone a great deal, and when I was at parties, I would become quiet and withdrawn the more I drank. After graduation, I was inducted into the Army and my alcoholism began to blossom. Liquor was cheap and everybody drank. I knew then that I was controlled by alcohol before I actually knew the technical definition for alcoholism, but I did not want to do anything about it because I didn't think I could live without it and could not imagine life without alcohol.

During the three years of law school, I declared a moratorium on my drinking because I was afraid that I could not drink and complete the academic program. I can remember that on the rare occasions when I did drink, I got very drunk and was very hung over.

The day I received the good news on the Bar results is when the daily drinking began. At first it was about four to six beers, and then I switched to bourbon, about a half-pint per day. This consumption did not affect my work or tennis or bridge. The first time I thought the pattern was changing was when I drove to Myrtle Beach and drank six beers on the way instead of three as I had in the past, arriving intoxicated instead of mellow. About this time, I started icing down beer to take with me to the tennis court and I sought a group of bridge players who drank while they were playing. The daily hangovers began and became a part of my regimen. I made excuses for a while telling myself that they were caused by cigarettes. Notwithstanding the drinking and the hangovers, my law practice continued to grow and no one knew how sick and unhappy I was becoming. My home life was miserable. My then wife and I rarely spoke civilly to each other, but we showed the world happy faces. No one ever mentioned to me that I had a drinking problem and of course, I overlooked my true feelings. She finally insisted that I enter treatment, and I can remember telling my psychiatrist, who was also treating me for a bi-polar disorder (manic depression), that my practice would be ruined if I went away for twenty-eight days and he told me that most people would not notice that I was gone and that those who did, would not care. Well, this came as quite a shock to someone who truly thought he was the center of the universe.

I went through the twenty-eight days never relating to anything and not accepting my alcoholism as a disease, which needed to be treated. I got drunk on the plane coming home and continued to drink alcoholically for another ten years, during which time I was divorced

and remarried. Finally, I hit that cross roads in my life where I had to make a decision. Denial was no longer an option. This time I was in a second marriage which was also disintegrating, and my two teenage sons were using drugs, drinking, and generally running wild in the streets. They had inherited my disease. For me, it was either stop drinking or die, and on hopefully my last day of using alcohol, I had been on a ten-day drinking marathon. Monday morning I had to make a court appearance. I had not shaved or taken a shower in over a week. To stop the shaking, I fortified myself with two big hits of vodka (Smirnoff, of course), did my business and came home, drinking straight vodka all the way.

At the time, I was living on a lake. It was early March, snowing and sleeting, the wind was blowing and it was cold. I decided to jump in the lake with a suit and overcoat on and swim until I drowned. This was the first time I really seriously considered getting sober. I had always thought that if I did quit drinking I would revert to my high school days when I was severely depressed. I looked at alcohol as my savior, but realizing how cold the lake water would be, I rationalized that sobriety couldn't be as dreadful as I thought it would be and I had never really given it a chance. I called two friends who had been sober for a few years and they came over and fed me coffee and soup and talked with me (not to me) about recovery. I went to an AA meeting that night and not only have I not had a drink since that time, I haven't wanted a drink and that was thirteen and a half years ago.

The AA program for me, although simple, has not been easy, but I don't think it should be because if it were, maybe it wouldn't have the inestimable value, which it has. Recovery is my way of life and my goal after a few years of recovery became to try and give to others what has been so unselfishly given to me. I belong in AA. The people whom I have been fortunate enough to befriend are special and blessed people and they know it. I know I am a walking miracle. I could have died a thousand times and taken many people with me, but because I didn't, I have a duty and an obligation to reach out to others who are struggling with this insidious illness.

We are very much alike but we also are different. My bottom did not include jail (except a few hours in a holding cell in Mexico) or a DWI, or a suspension of my law license or bankruptcy, but I sank as low as I could go without death or insanity. I do not take my sobriety for granted. It is a daily blessing and I must work on it every day without exception.

Two years ago, I was diagnosed with prostate cancer which was discovered as a result of a routine physical. I had not had a physical examination in over ten years and although I had no health problems, from somewhere a clear message was being sent to me to have a physical. I had the radical surgery. At no time during the process have I had any fear, including when the cancer was discovered, during the surgery and the after care. Today I am cancer free. I must attribute my lack of fear to my faith in a Higher Power, which I discovered through Alcoholics Anonymous. If I had been drinking when the cancer was discovered, I would have been terrified. The program works if one will let it work.

Confidential Help for the Lawyers of North Carolina



What is Depression?

Depression is an illness that involves the whole person. It includes the person's body, mood, and thinking. It affects eating and sleeping habits feelings about self, and thoughts about everything. Fifteen percent of people who have a serious depression may eventually commit suicide. Don't let this happen to you or to someone you know. Confidential help is available through the North Carolina State Bar Lawyer Assistance Program.

Facts About the Problem

The inability to experience pleasure (anhedonia) presents as the primary symptom of depression. The illness is all consuming, completely enveloping a person's life. The condition causes one to feel hopeless, helpless, sad, or down during most of the day, almost every day. Depressed people experience feelings of guilt and unworthiness. Sleeping patterns are adversely affected as are eating habits, often resulting in excessive weight loss or gain. People feel hopeless and often believe that they and everyone else would be better off if they were dead. They may be suicidal. Depression is not the result of weakness, moral defect, or deficiency of character. Rather, it is a chronic disease, the nature of which can be organic, psychological, or interpersonal.

LAP also treats mental illness?

The good news is that depression is treatable. The LAP also provides assistance to lawyers suffering from depression and/or other mental health disorders. The LAP seeks to confidentially help a lawyer evaluate any problem he or she is encountering that may potentially adversely affect his or her ability to carry out his or her duties as a lawyer and to also address the problem. The goal of the program is to provide assistance to lawyers who may suffer from depression or other mental health disorders before such issues become debilitating and cause adverse consequences to the lawyer and his or her clients.

How does it work?

The LAP will assist a lawyer in need in obtaining good medical assistance from a trained professional who understands the problems that lawyers deal with on a day to day basis. This is usually a two stage process: first, a preliminary evaluation is conducted by the one of our clinical staff to try to understand the scope of the issues involved and then, utilizing this knowledge, connecting the lawyer with a counselor, psychiatrist, or other professional, best suited to provide assistance. The LAP does not itself provide treatment.

Confidential Help for the Lawyers of North Carolina



Who will LAP help?

LAP offers assistance to any North Carolina lawyer who believes he or she may be suffering from depression or other mental health disorders. LAP may also help family members find resources as part of its assistance to a lawyer.

Confidentiality

Again, LAP is entirely separate from the Disciplinary Department of the State Bar. Information received by LAP concerning any lawyer seeking help or to whom assistance is offered is confidential. The confidentiality provided is that of the attorney-client privilege. See 27 NCAC 1D, Rule .0613 and Rule 1.6 of the Revised Rules of Professional Conduct. If you call as the spouse, child, or friend of a lawyer you suspect may have a mental health problem, or who may be experiencing depression, your communication is also treated as confidential.

Take the Test

If you or someone you care about answers yes to five or more of these questions (including questions # 1 or #2)... and if the symptoms described have been present nearly every day for two weeks or more, you should consider speaking to a health care professional about different treatment options for depression:

YES NO

1. Do you or they feel a deep sense of depression, sadness, or hopelessness most of the day?
2. Have you or they experienced diminished interest in most of all activities?
3. Have you or they experienced significant weight change when not dieting?
4. Have you or they experience a significant change in sleeping patterns?
5. Do you or they feel unusually restless....or unusually sluggish?
6. Do you or they feel unduly fatigued?
7. Do you or they experience persistent feelings of hopelessness and/or inappropriate feelings of guilt?
8. Have you or they experienced a diminished ability to think or concentrate?
9. Do you or they have recurrent thoughts of death or suicide?

Other explanations for these symptoms may need to be considered. Adapted from *American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders*. Fourth Edition. Washington, DC. American Psychiatric Association: 1997

Kitchen Table

By Don Carroll

Two lawyers who were very respected members of the Bar were both patients seeing the same counselor. Each had come because of loneliness, depression, and burnout. Neither was aware that the other was also seeking help. As the sessions progressed both men talked about their deep caring about many of their clients and their love of the law. Sometimes when they lost a case they would share their feelings about how such a loss felt. Like us all, their law school training of learning to look at the client's case objectively made them believe that taking the time to consider their feelings about their loss and their client's loss was unprofessional, even unmanly. They felt alone with their emotions and isolated from other lawyers because of them.

In the safety of their counselor's office they begin to wonder aloud about their feelings, about their work and its impact on the lives of their clients. They often shared stories with their counselor about their clients' cases with great animation. The two men had been professional partners for more than 20 years. They shared a receptionist, a staff of para-professionals, an office, but they didn't know each other. They shared a counselor too, who was ethically bound not to tell either about the other's visits or even that they were both patients. The counselor encourage each of them to talk to his partner about these things, but the counselor got the same response each time: "Him? Heavens, he would just laugh."

This story was originally told by Dr. Rachel Remen about physicians in her book, *Kitchen Table Wisdom*. I think lawyers are no different. Lawyers often feel isolated from others by the nature of their work experiences. The attorney-client privilege prevents us from talking with those outside our firms about client matters and within it is just as difficult to talk to each other about the feeling quality of our experiences as lawyers. To borrow a little more from Dr. Remen adapted to lawyers—

People who are lawyers have been trained to believe that it is scientific objectivity that makes them most effective in their efforts to understand and resolve their client's problems and that a mental distance is necessary to protect them from becoming wounded by their work. Law school is demanding training. Yet objectivity makes us far more vulnerable emotionally than compassion or a simple humanity. Objectivity separates us from the life around us and within us. We are wounded by life just the same; it is only the healing that cannot reach us.

Objectivity is not whole. In the objective stance no one can draw on their own human strengths, no one can cry, or accept comfort, or find meaning, or pray. No one who is untouched by it can really understand the life around them either. Lawyers are trained fact finders. Despite the great wonder in the simple pleasures of life, it is possible for us to see only despair and experience only frustration in the practice of law.

The ability to be fully present, and not just objectively there with a client, is more a matter of cultivating a sense of perspective and meaning about life. It is more a spiritual quality than a mental one. One can start to cultivate presence by becoming more present to oneself and others. A first step is to take time to experience your own feelings and find someone you can express them to who will be a good listener without judgment. Many lawyers need some structure to be able to get the hang of what probably came natural as a child. A structure is provided by finding a good counselor you can talk to or going to a self-help group that addresses a major issue in your life. Normal depression (as opposed to clinical depression where the assistance of a psychiatrist is needed) can be the natural healing way the psyche has of pushing us inward to face an emotional rigidity that has taken the joy and enthusiasm out of life.

Dr. Remen believes that an impulse toward wholeness is natural and exists in everyone, though each of us heals in our own way. Some people heal because they have work to do. Others heal because they have been released from work and the pressures and expectations that others place on them. Some people need music, others need humor. But universally people need to be freed from their own emotional isolation to find healing and joy in their lives. We need to be able to share our experiences over the kitchen table. It is not the content of this sharing but the process of this sharing that brings wisdom. If you need help in finding a way to make your life more open to being fully experienced, or if you just know that something is wrong but you can't put your finger on it—there is help. Call the Lawyer Assistance Program.

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