

Substance Abuse: How the Pandemic Has Made Preventing Addiction Harder

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Substance Abuse: How the Pandemic Has Made Preventing Addiction Harder

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Behavioral Signs of Addiction

- **disregard of harms caused**
- **denial of addiction**
- **hiding usage**
- **having “stashess”**
- **lying about usage**
- **loss of control even though wanting to taper or stop**

Behavioral Signs of Addiction

- **friends, family, coworkers expressing concern**
- **increases in physical and social isolation**
- **alteration of long-standing positive habits such as exercise, workouts, attentiveness to regular medical care, attentiveness to personal finances, participation in religious observation, and similar**
- **maintaining an “adequate” supply of substance(s)**

Coping Tools: What You Can Do, Now, To Help Yourself

- **take the time to consider and reflect**
- **abandon blame**
- **don't be ashamed, no matter what you find when you look inwardly**
- **if you see warning signs, “own them”, but without self-flagellation**
- **focus on making positive changes, whether large or incremental**

Coping Tools: What You Can Do, Now, To Help Yourself

- **ask trusted friends or family for their input**
- **and, for their assistance**
- **forego the instinct to blame others**
- **recognize that, no matter what, there are others worse off**
- **take stock of your own value!**

Where Can I Get More Information or Help?

- www.otherbar.org/resources/
- <https://www.calbar.ca.gov/Attorneys/Attorney-Regulation/Lawyer-Assistance-Program>
- <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>

Where Can I Get More Information or Help?

- www.publichealth.org/resources/addiction/
- www.samhsa.gov/find-treatment
- www.nami.org

Psychological Signs of Addiction

- **mood swings**
- **lack of motivation**
- **paranoia**
- **withdrawal from social contacts**
- **irritability**

Psychological Signs of Addiction

- **anxiousness**
- **forgetfulness**
- **feelings of inadequacy**
- **unusual or unexplained grief**
- **hallucinations**

Psychological Signs of Addiction

- **delusions**
- **increased aggression**
- **deterioration in decision-making abilities**
- **abandonment of long-held adherence to social norms**

Physical Signs of Addiction

- **drowsiness**
- **severe changes in diet/appetite**
- **seizures**
- **exhaustion**
- **sleeplessness**
- **increasing tolerance**

Other Warning Signs of Addiction

- **increasing isolation**
- **creating new relationships with addicted people**
- **increased participation in risky activities or risky social behaviors**
- **lack of attention to finances / increase spending**
- **change in self-care, attention to appearance, maintenance of property**

How the Pandemic Has Made Preventing Addiction Harder

Key message: Crisis increases the risk of addictive behaviors leading to addiction.

How the Pandemic Has Made Preventing Addiction Harder

- **lack of nine-to-five “office regime” leads to freedom to use at ordinarily “forbidden” times of the day**
- **when working from home, the need to maintain a “businesslike” appearance may no longer seem necessary**
- **flexible work schedules create timeslots for activities, including use of substances, that normally would be limited to weekends and vacations**
- **loneliness, self-doubt, fear of the future, all can trigger a need to temporarily “salve the pain.”**

How the Pandemic Has Made Preventing Addiction Harder

Key message: In a time of pandemic, the additional pressures and strangeness of the times increase addiction risk and addictive behaviors.

How the Pandemic Has Made Preventing Addiction Harder

- **forced withdrawal from physical and social interaction with family, friends, coworkers, clients, customers**
- **inability to engage in activities that usually provide joy**
- **financial stress caused by an uncertain economy**
- **emotional stress caused by polarizing political times**

How the Pandemic Has Made Preventing Addiction Harder

- **uncertainty about what the future may bring -- physically, economically, socially and more**
- **concern about losing close friends and loved ones to the disease**
- **concern about potentially contracting the disease yourself**
- **feeling torn between engaging in behaviors that likely increase your exposure and disease risk, but are viewed as necessary by family, work, or self-guilt**
- **doubts about long-held religious beliefs**

The End

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The State Bar of California

Rule 1.1 Competence

(Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably* necessary in the circumstances.

Comment

[1] This rule addresses only a lawyer’s responsibility for his or her own professional competence. See rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

[2] See rule 1.3 with respect to a lawyer’s duty to act with reasonable* diligence.

**NEW RULE OF PROFESSIONAL CONDUCT 1.1
(Former Rule 3-110)
Competence**

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 3-110 (Failing to Act Competently) in accordance with the Commission Charter, including consideration of the national standard of the ABA counterpart, Model Rule 1.1 (Competence). The result of the Commission’s evaluation is proposed rule 1.1 (Competence).

Rule As Issued For 90-day Public Comment

The main issue considered when drafting proposed rule 1.1 was whether the rule should be revised to delete the longstanding California standard prohibiting intentional, reckless or repeated acts of incompetence in order to substitute a standard like Model Rule 1.1 which states affirmatively that a lawyer must provide competent representation to a client. The Commission is recommending that the current California standard be retained as this is consistent with applicable Supreme Court precedent that has been repeatedly applied in State Bar Court disciplinary proceedings.

In *Lewis v. State Bar* (1981) 28 Cal.3d 683, the Supreme Court reaffirmed that a lawyer’s single act of ordinary negligence does not suggest that the lawyer is unfit to practice law, and that the discipline system should not be burdened with conduct that is best addressed as a civil issue: “This court has long recognized the problems inherent in using disciplinary proceedings to punish attorneys for negligence.” In *In Matter of Torres* (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149, the State Bar Review Department emphasized: “We have repeatedly held that negligent legal representation, even that amounting to legal malpractice, does not establish a [competence] rule 3-110(A) violation.” It is important to note that under California’s approach a lawyer’s single act of gross negligence is not given a free pass. The Commission is recommending that paragraph (a) of the proposed rule be amended to include an explicit reference to gross negligence. In addition, gross negligence might also be regarded as an act constituting moral turpitude (See Business and Professions Code § 6106 and proposed rule 8.4).

Although the essential prohibition of the current rule is retained, proposed rule 1.1 includes three substantive changes. First, the concept of “diligence” as a component in the definition of competence has been deleted. The Commission is recommending a separate rule on a lawyer’s duty of diligence consistent with the approach used in most jurisdictions (see the executive summary of proposed rule 1.3 (Diligence)). A new comment in proposed rule 1.1, Comment [2], would cross reference rule 1.3 to alert lawyers to this change. A corresponding comment in proposed rule 1.3 cross references rule 1.1.

Second, in paragraph (c), in situations where a lawyer lacks sufficient learning and skill to handle a client’s case or matter, the Commission is recommending the addition of an option for the lawyer to refer a matter to another attorney whom the lawyer reasonably believes is competent.

Third, the Commission is recommending deletion of the existing Discussion paragraph that provides case citations addressing a lawyer’s supervision obligations. Rather than relying on case citations, the Commission is recommending three new separate rules on supervision (see

the executive summaries of proposed rules 5.1 (Responsibilities of Managerial and Supervisory Lawyers), 5.2 (Responsibilities of a Subordinate Lawyer) and 5.3 (Responsibilities Regarding Nonlawyer Assistants). This is consistent with the approach to the duty of supervision in most jurisdictions.

Post-Public Comment Revisions

After consideration of comments received in response to the initial 90-day public comment period, the Commission made no changes to the proposed rule and voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 1.1 at its November 17, 2017 meeting.

Supreme Court Action (May 10, 2018)

The Supreme Court approved the rule as submitted by the State Bar to be effective November 1, 2018.

Rule ~~1.1~~ ~~3-110~~ ~~Failing to Act Competently~~ Competence
(Redline Comparison to the California Rule Operative Until October 31, 2018)

- (Aa) A ~~member~~lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (Bb) For purposes of this rule, “competence” in any legal service shall mean to apply the ~~1) diligence, 2(i)~~ learning and skill, and ~~3(ii)~~ mental, emotional, and physical ability reasonably* necessary for the performance of such service.
- (Cc) If a ~~member~~lawyer does not have sufficient learning and skill when the legal ~~service is~~services are undertaken, the ~~member may~~lawyer nonetheless ~~perform such services competently~~may provide competent representation by ~~4(i)~~ associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably ~~believed~~believes* to be competent, ~~or 2(ii) by~~ acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required ~~whereif~~ referral to, or association or consultation with, another lawyer would be impractical. ~~Even~~ Assistance in an emergency, ~~however, assistance should~~ must be limited to that reasonably* necessary in the circumstances.

Discussion Comment

~~The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents. (See, e.g., *Waysman v. State Bar* (1986) 41 Cal.3d 452; *Trousil v. State Bar* (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; *Palomo v. State Bar* (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; *Crane v. State Bar* (1981) 30 Cal.3d 117, 122; *Black v. State Bar* (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288; 499 P.2d 968]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713; 494 P.2d 1257]; *Moore v. State Bar* (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161; 396 P.2d 577].)~~

[1] This rule addresses only a lawyer's responsibility for his or her own professional competence. See rules 5.1 and 5.3 with respect to a lawyer's disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

[2] See rule 1.3 with respect to a lawyer's duty to act with reasonable* diligence.

Northwest Studies and 2015 Hazelden Betty Ford/ABA Study on Substance Use Disorders in the Legal Profession

- Sample of 12,825 licensed, employed attorneys.
- 20.6% scoring positive for potentially alcohol-dependent drinking.
- Men had a higher proportion of positive screens for problematic use compared with women.
- Younger significantly higher compared with the older age groups – 30 years of age or younger more likely to have a higher score.
- Working in the field for a shorter duration had a significantly higher proportion.
- Attorneys working in private firms had higher proportions than those in other environments.
- Higher proportions for associate level compared with other positions.
- 22.6% reported use of alcohol or other substances was problematic at some point.
- Depression, anxiety, and stress were significant.
- These data underscore the need for greater resources for lawyer assistance programs, and also the expansion of available attorney-specific prevention and treatment interventions.

- 1990 study of 1200 attorneys in Washington State:
 - 18% of attorneys were problem drinkers, almost twice the 10% among American adults at that time.

Northwest Studies and 2015 Hazelden Betty Ford/ABA Study on Substance Use Disorders in the Legal Profession

- Age was a strong predictor, with younger respondents demonstrating significantly higher scores.
- Predicted higher frequencies of drinking and quantity of alcohol consumed.
- Of participants who use a specific substance in the past 12 months: stimulants 74.1%, sedatives 51.3%, tobacco 46.8%, marijuana 31%, and opioids 21.6%.
- While men had significantly higher levels of depression, women had higher levels of anxiety and stress.
- 11.5% reported suicidal thoughts at some point; 0.7% reported at least 1 prior suicide attempt.
- 6.8% reported past treatment for alcohol or drug use.
- 2 most common barriers: not wanting others to find out they needed help, and concerns regarding privacy or confidentiality.

Northwest Studies and 2015 Hazelden Betty Ford/ABA Study on Substance Use Disorders in the Legal Profession

Conclusions

- Attorneys experience problematic drinking that is hazardous, harmful, or otherwise generally consistent with alcohol use disorders at a rate much higher than other populations.
- The data reported (supports) investments in lawyer assistance programs and an increase in the availability of attorney-specific treatment.
- Greater education aimed at prevention is also indicated, along with campaigns to overcome the pervasive stigma surrounding substance use disorders and mental health concerns.
- The confidential nature of programs should be publicized.

RESOURCES

The Other Bar (California)

1 (800) 222-0767 - otherbar.org : confidential@otherbar.org

The Other Bar is a network of recovering lawyers and judges throughout the state, dedicated to assisting others within the profession who are suffering from alcohol, chemical dependency and substance abuse problems. They are a private, non-profit corporation founded on the principle of anonymity and provide services in strict confidentiality. The program is voluntary, does not report to anybody or entity (not sponsored by or part of the State Bar) and is open to all California lawyers, judges and law students.

California Lawyer Assistance Program

1 (877) 527-4435 - calbar.ca.gov

State bar sponsored program including assessment, testing and counseling as a lawyer assistance resource for alcohol and substance misuse and mental health. The program is completely confidential unless part of the disciplinary process.

Lawyers Assistance Programs (CoLAP: Commission on Lawyer Assistance Programs)

1 (800) 285-2221 - americanbar.org

Lawyer Assistance Programs are available nationwide. Some are independent, some are under the auspices of the court and some are part of the bar association. They are listed at:

americanbar.org/groups/lawyer_assistance.html

12 Step Support Meetings

Alcohol: 1 (212) 870-3400 - aa.org

Overeating: 1 (612) 377-1600 - overeaters.org and eatingdisordersanonymous.org

Cocaine: 1 (310) 559-5833 - ca.org

Sex: 1 (800) 477-8191 - saa-recovery.org

Gambling: 1 (626) 960-3500 - gamblersanonymous.org

Co-Dependency: 1 (888) 425-2666 - al-anon-alateen-msp.org

SAMHSA: U.S. Department of Health and Human Services and Substance Abuse and Mental Health Services Administration: clearinghouse for alcohol and drug information

1 (877) 726-4727 - samhsa.gov

This organization has a great deal of information for individuals seeking help, professionals in the helping professions and researchers.

Recovery Month

1 (877) 726-4727 - recoverymonth.gov

This annual event is held every September. It features events and resources for those with substance abuse use issues and those who are about them.

American Bar Association

1 (800) 285-2221 - americanbar.org

americanbar.org/groups/lawyer_assistance.html for lawyer assistance resources and information across the country. National resources are listed at apps.americanbar.org/legal-services/colap/laplinks.html

Numerous articles are linked at apps.americanbar.org/legal-services/colap/resource/lib.html

Past issues of GP Solo, a publication of the ABA General Practice, Small Firm and Solo Division,

include four theme issues "Bumps in the Road." Many topics related to addiction, mental illness, stress and others are available. Back issues may be viewed at:
americanbar.org/publications/wp_solo/past_issues.html

National Alliance on Mental Illness

1 (800) 950-6264 - nami.org

NAMI has information on a wide variety of mental illness including ADHD, Bipolar Disorder, Personality Disorders, Depression, Eating Disorders, OCD, PTSD and others. There are also national and local support resources.

Depression and Bipolar Support Alliance

1 (800) 826-3632 - nabmsa.org

A patient-directed organization whose purpose is to educate patients, families and the public concerning the nature of depressive illness.

American Psychological Association

1 (800) 374-2721 - apa.org

Numerous resources on many mental health and wellness topics

American Psychiatric Association

1 (888) 357-7924 - healthyminds.org

The site provides information on psychiatric disorders such as depression and provides help locating a psychiatrist in your local area.

American Psychiatric Foundation

1 (703) 907-8503 - psychfoundation.org

Committed to operating programs and funding initiatives that promote awareness of mental illness, the effectiveness of treatment, and the importance of early intervention.

Mental Health America

1 (800) 969-6642 - mha.org

An association that works with over 340 affiliates to promote mental health through advocacy, education, research, and services.

National Institute of Mental Health

1 (301) 443-4513 & 1 (866) 615-6464 - nimh.nih.gov

Information regarding various mental health issues, including anxiety disorders and depression.

National Institute on Drug Abuse

1 (301) 443-1124 - drugabuse.gov

This division of the National Institutes of Health provides information on the science of drug and alcohol addiction. There are links to a wide variety of substances. An excellent, *The Science of Addiction*, is available by mail as a PDF, in English or Spanish.

Behavior Health Treatment Services Locator

This is an on-line source of information for persons seeking treatment facilities in the United States or U.S. Territories for substance abuse/addiction and/or mental health problems.

<https://findtreatment.samhsa.gov>