

THE LIE IS DEAD - WE DO RECOVER!

Authors: Myer J. Cohen, Esq.
Harry G. Goodheart, III, Esq.
Charles O. Hagan, Jr., Esq.

INTRODUCTION

“Once a drunk, always a drunk.” How many times have we heard colleagues say this about another attorney after his or her latest escapade, brush with the law, disciplinary complaint, or embarrassing scene at the office party? Unfortunately, in many segments of society, including the law, this belief is stated as a fact, despite evidence compiled over the past seven decades that recovery from alcoholism and drug addiction is possible.

Before describing Florida Lawyers Assistance, Inc. (FLA), we need to look at some of the attitudes, behaviors, and preconceptions held by attorneys and judges. To begin with, the legal profession clearly qualifies as a high stress occupation. Beginning in law school, the attorney is taught that he or she is a problem solver whose opinions are sought and valued not only by clients, but by the public as well. Lawyers are regarded as learned individuals who possess knowledge in non-legal as well as legal matters. Attorneys have historically comprised the majority of federal and state legislators, and are often regarded by the general public as the individuals most qualified to analyze and decide the important political, economic, and financial problems of the day.

The medical field has long recognized that the use of drugs, including alcohol, increases proportionally with the degree of stress and pressure in one’s

life.ⁱ Attorneys tend to take their role as problem solvers seriously and believe there is little they cannot handle by using effort and concentration. Unfortunately, the use of alcohol or other drugs often becomes a primary relief mechanism to deal with the strain of constantly having to come up with the right answer to other people's problems. In many other instances, having a few drinks with one's colleagues at "the other bar" is the acceptable and expected means of celebrating a victory or dulling the pain of a defeat in court that day. Attorneys are taught that no problem is insurmountable, that no challenge cannot be overcome by the use of one's keen legal intellect and training; taking a few drinks, doing a little cocaine, or taking a few pills only enhances this belief.

Unfortunately, this intellectual thought process represents the greatest impediment to a lawyer's recovery from chemical dependency. Trying to "think" one's way out of addiction is as effective as believing that a person can use willpower to cure him or herself of diabetes, heart disease, or cancer. The disease model of alcoholism was first proposed by Alcoholics Anonymous in 1935ⁱⁱ and has been accepted by the American Medical Association since the mid-1950's. This model of addiction recognizes that the compulsive use of mood altering chemicals is not a question of morality, weakness of character, or lack of willpower. In recent years, medical studies have confirmed that the prevailing characteristic of addiction is biochemical, i.e., that measurable differences in action of neurotransmitters can be found in the brains of addicts

as opposed to non-addicts.ⁱⁱⁱ These biochemical differences appear to be genetic, although the onset and progression of the disease can be affected, positively or negatively, by environmental and psychological factors. Addiction is characterized as chronic (an addict is never “cured”), progressive (the illness always gets worse if ignored), and invariably fatal if left untreated. The symptoms and effects of the illness are well documented and recognizable to the trained professional, but the progression of the illness can be arrested at any point with proper treatment and institution of a daily recovery program.

Faced with their own or another’s alcoholism or addiction, the attorney’s initial reaction is almost always, “I can handle it myself.” Such an attitude is akin to saying, “I can self-treat these pains I’m having in my chest.” By training, lawyers become to a greater or lesser degree the creatures of their own image or persona. How can they ask for help when they have been told they are society’s problem solvers? They tell themselves that they are the experts at everything, that no one could provide better counsel than they can themselves. If unchecked, the end results of such impaired thinking and denial are always medical, legal, and disciplinary problems, eventually leading to loss of one’s license, career, and life.

HISTORICAL PERSPECTIVE OF FLORIDA LAWYERS ASSISTANCE, INC.

In 1976, the Florida Supreme Court specifically recognized the disease concept of alcoholism and ruled that the presence of the illness could be taken into consideration when determining sanctions to be imposed on an attorney.^{iv}

Following this decision, the Court in 1979 mandated The Florida Bar to establish a commission on alcohol and drug abuse, charging the commission with assisting and monitoring chemically dependent attorneys during and after the grievance process. The Court also expressed its hope that the commission would be able to identify and assist affected lawyers prior to disciplinary proceedings being filed. The commission eventually evolved into The Florida Bar Special Committee on Alcohol and Drug Abuse (the Committee).

In 1981 the Committee issued a report containing the following recommendations:

1. Establishment of a statewide, toll-free hotline through which chemically dependent attorneys could obtain help.
2. Establishment of an independent Alcohol Advisory Committee to assist the Court and the Bar in disciplinary cases where chemical dependency was involved.
3. Establishment of an educational program, including speakers to appear at local bar meetings, to inform attorneys of the problem and to let chemically dependent attorneys know that help was available.

In 1985, The Rules Regulating The Florida Bar (the Rules) were amended to provide that the Bar was to “create or fund a program for the identification of its members who are addicted to or dependent upon chemicals and the assistance of those members in overcoming such addictions or dependencies.”^v

The rationale for implementing the rule was the Court's determination that a program designed to intervene *before* a chemically dependent attorney entered the disciplinary system could result in substantial savings of funds, client harm, and devastated lives, as well as acting as a resource to grievance committees in cases where alcohol or drugs were involved. In that same year, the Bar was, for the first time, given the responsibility of monitoring the probation of an attorney disciplined by the Court.^{vi}

Both the Bar and the Committee perceived that a major impediment to the objective of reaching attorneys before they became involved in discipline was the issue of confidentiality of information provided by lawyers voluntarily seeking help. In order to provide the necessary safeguards, 25 active members of The Florida Bar petitioned the Court for a further amendment to the Rules providing for such confidentiality. In 1985 the Court authorized Rule 3-7.1(j) providing:

...that an attorney has voluntarily sought, received, or accepted treatment for alcoholism or alcohol or drug abuse shall be confidential and shall not be admitted as evidence in disciplinary proceedings under these rules unless agreed to by the attorney who sought the treatment.

This confidentiality protection was codified in 2000 under Ch. 397.486, F.S., which states:

Lawyer assistance programs; confidentiality of records, proceedings, and communications.--The records, proceedings, and all communications by and between an individual seeking assistance and the lawyer assistance program shall be deemed confidential and shall not be subject to disclosure or available for court subpoena. This section does not prevent the subpoena of business records that are otherwise available through subpoena, nor does this section

preclude release or disclosure of information or communications by the lawyer assistance program when such disclosure is mandated or required as a condition or precondition for entry in the program. Such records are not to be construed as privileged merely because they have been maintained by a lawyer assistance program.

In carrying out the Court's mandate to create or fund a lawyer assistance program (LAP), it was decided that in order to assure confidentiality and provide maximum separation between the Bar and the LAP, a new corporation independent of the Bar should be created. This led to the formation of Florida Lawyers Assistance, Inc. in February 1986.

FLA functions through a 15 member board of directors (at least three of whom are non-lawyers) appointed by The Florida Bar Board of Governors. In addition, FLA receives approximately 60% of its funding through an annual allocation from the Bar. Other than that, FLA operates completely independently of the Bar, judiciary, or Board of Bar Examiners. As stated in FLA's mission statement:

Florida Lawyers Assistance, Inc. (FLA) provides programs and services to assist attorneys, judges, law students, and other legal professionals who may be impaired in their ability to function in a legal setting. The backbone of FLA is a support network of recovering attorneys and judges who wish to carry the message to fellow members of their profession that recovery is possible.

FLA concentrates on assisting legal professionals with chemical dependency and/or psychological problems, providing evaluation, assessment and referral services, peer and facilitated support, aftercare programs, and monitoring services. In addition, FLA engages in preventative services through educational outreach programs, including mailings, literature distribution, and presentations to the judiciary, law schools, law firms, bar associations, bar seminars, and other professional entities. FLA's services are available for problems associated with drug, alcohol,

gambling, food, and sexual addictions, as well as problems resulting from depression, stress, finances, and other areas that might affect an attorney's ability to competently function in a legal setting.

FLA is not a 12 Step program, although in cases of chemical dependency it relies on participation in the programs of Alcoholics Anonymous and Narcotics Anonymous as the primary resource in an attorney's recovery. Neither is FLA a treatment program, counseling center, employment agency, legal referral center, or employee assistance program, although all of these services can be accessed through FLA's resources.

FLA works independently of, but cooperatively with The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, local bar associations, and the bar at large.

From its inception, FLA has been an organization of lawyers helping lawyers. Although it maintains its primary office in Ft. Lauderdale with a staff composed of an Executive Director and Assistant Director (both of whom are recovering attorneys), a Clinical Director (a psychologist), and office staff, its daily operations are carried out by a network of over 300 attorneys, judges, law students, lay persons, and medical personnel, most of whom are themselves in recovery from chemical dependency or psychological impairments, who volunteer their time and effort to help others recover.

A Solution to the Problem

One of the primary purposes of any peer assistance program is the early identification of impaired individuals. Very often in the practice of law, the first signs of trouble unfortunately come through the disciplinary system. At early stages of the illness, typical grievances include allegations that a lawyer has

failed to respond to calls from clients, has not kept his or her clients properly informed about the status of the file or case, or possibly an arrest for a first DUI. Unfortunately, due to the chemically dependent attorney's denial regarding the root of such complaints, combined with many grievance committees' lack of understanding about chemical dependency and perhaps some skillful (although perhaps misguided) advocacy on behalf of the respondent, the majority of such minor grievances are "NPC'd" (no probable cause). If the disease is not caught at this point, it is almost certain that the attorney will be back before the grievance committee on increasingly graver charges, such as appearing at client meetings or court hearings under the influence, failing to appear at all, missing deadlines and statute of limitations dates, acting in a bizarre manner, abandoning his or her practice, further DUI or controlled substance arrests, or trust account violations. It has been documented that between 30% and 50% of all cases appearing before grievance committees, including minor matters, have as their cause some form of chemical or psychological impairment.^{vii}

In cases where chemical dependency is suspected, FLA has urged the grievance committees to refer the subject attorney to FLA for an evaluation, which the committee can facilitate through a recommendation for diversion.^{viii} If chemical dependency or some other identifiable impairment is found after the assessment and evaluation process, the attorney is requested to enter into a written rehabilitation contract with FLA. The contract generally has a three year

term and requires the attorney to comply with a structured rehabilitation program designed for the particular individual. Most substance abuse contracts are 12 Step oriented, requiring the attorney to attend a specified number of AA or NA meetings per week, obtain a sponsor, and follow the 12 Step program. In addition, the attorney is assigned a recovering attorney monitor with whom they are required to meet on at least a monthly basis, is required to attend an attorney support meeting on a weekly basis if one is available in their geographic area, agrees to submit to random urinalysis, and may be required to participate in group or individual therapy if warranted. The monitoring system and attorney support meetings are vital parts of the program which are made possible by the volunteers throughout Florida who devote their time and effort to FLA. The monitoring and attorney support meetings are really what make the FLA program unique, and which no doubt contribute significantly to the extremely high recovery rate shown by FLA participants.

Written monitor reports are filed with FLA each month and constitute documentary evidence of recovery that would be otherwise be difficult or impossible to prove. When possible, a monitor is assigned who attends the same attorney support group as the subject lawyer, so that the monitor can assess the attorney's rehabilitation in a group setting on a weekly basis.

The attorney support groups currently meet in over 20 cities throughout Florida on a weekly basis. The groups, which are completely confidential, meet for an hour and the members support each other through an exchange and

sharing of their experiences, strength and hope. Particular emphasis is placed on voicing those concerns arising out of the participants' practice of law, admissions process, or disciplinary problems, so that other members of the group with experience in such areas can share how they made it through such stressors without the need to resort to using chemicals. The support meetings are also the primary vehicle for introducing new members to the AA and NA fellowships; by first attending a support meeting with their colleagues, with whom they hopefully feel comfortable, new members find it easier to make the transition to community based 12 Step meetings. Being in a room full of other recovering attorneys goes a long way toward ridding the addicted lawyer of the feeling of isolation, guilt and shame which are the hallmarks of chemical dependency. A listing of the attorney support meetings can be found on the FLA web page at **<http://www.fla-lap.org>**.

The advantage of the FLA program to chemically dependent lawyers, in addition to providing a peer support system uniquely designed for the legal community, is that they have a means of documenting their ongoing recovery efforts and successes through highly credible evidence. The Florida Bar has adopted the Florida Standards for Imposing Lawyer Sanctions which state that ongoing, supervised rehabilitation with FLA will be considered as mitigation when determining sanctions to be imposed.^{ix} Likewise, evaluation reports from FLA and from qualified health care professionals certified by FLA are often used to establish that the behavior leading to discipline was in fact drug or alcohol

related. The FLA program has been used to successfully supervise probation of attorneys ordered by the Supreme Court. Regular reports are made to The Florida Bar outlining the attorney's progress or lack of progress in recovery. In such cases, the costs of FLA's services are partially defrayed by an initial registration/evaluation fee and monthly monitoring fees.

In addition to the above, FLA also performs intervention services in voluntary and mandatory cases, provided the circumstances meet certain criteria. Intervention is a means by which the attorney can be confronted in the hope of dismantling the denial system and allowing the addict to acknowledge he or she needs help.^x Initial contact with FLA is usually made by a family member, colleague, or close friend who is aware of the addiction. An FLA staff member will assemble an intervention group composed of five to ten individuals who have personal knowledge of the illness' effect on the subject attorney. These individuals will be fully rehearsed by the FLA facilitator prior to the intervention, and the actual confrontation will take place without prior warning to the attorney. The ultimate result is to have the attorney agree to go directly from the intervention to chemical dependency treatment. Interventions, if performed carefully and out of a sense of caring rather than accusation, have an extremely high rate of success.

Law Students and Others

The services provided by FLA are equally available to law students and other applicants to The Florida Bar. In cases where an application for admission

reveals a history of alcohol or drug abuse, chemical dependency or mental health treatment, or drug/alcohol related offenses, the Florida Board of Bar Examiners understandably must determine if the applicant has in fact reached a point in his or her recovery which would permit the competent practice of law. In cases where such a point has not been reached, the potential danger to the public and The Florida Bar is obvious. FLA endeavors to provide the Board of Bar Examiners with evidence of rehabilitation using the evaluation, contract, and monitoring provisions described above.

Two decades of experience has demonstrated that in certain circumstances, a period of monitoring after admission is appropriate, and in such cases applicants are often admitted on a conditional basis, generally for a period of between one and five years. While no restrictions are placed on the applicant's actual practice of law, they are required to remain under or enter into a contract with FLA for the probationary period. In the event of a material violation of the contract, such as a positive urinalysis or failure to meet with the monitor, the FLA staff consults with the Florida Bar's Legal Division to recommend appropriate measures. In some cases, an extension of the probationary period may be sought or, if warranted, a petition to show cause for termination of the conditional admission may be filed by the Bar. FLA may recommend residential or outpatient treatment, individual counseling, or another alternative in lieu of suspension.

ABA Commission on Lawyer Assistance Programs

FLA is a longstanding participant in the American Bar Association's Commission on Lawyer Assistance Programs (CoLAP). The Commission provides education and prevention services to the ABA and coordinates the lawyer assistance programs which now exist in some form in every state, Canadian province, and other countries. Each year, the Commission holds a workshop where representatives meet to exchange information concerning their respective programs. The workshop consistently includes representatives from the state programs, as well as lawyer assistance programs from Canada, Great Britain, Mexico, and other countries. The meeting is followed by the three day annual meeting of International Lawyers in A.A. (ILAA), which is attended by recovering attorneys from all over the world. CoLAP has an extensive internet presence (<http://www.abanet.org/legalservices/colap>), providing a listing of lawyer assistance programs around the country, recovery related resources, news articles, and annual workshop information.

Since the Commission's formation in 1988, FLA has always been considered to be one of the most comprehensive programs in the United States. Florida has an advantage in that an integrated bar can develop and support a uniform policy for evaluation, treatment, and monitoring of chemically dependent attorneys. Recently, in recognition of the direction in which the state programs, including FLA, are heading, the Commission has expanded its role to deal with attorney impairments other than those caused solely by chemical dependency.

Other Impairments

It has become apparent that conditions other than chemical dependency can also adversely affect an attorney's ability to practice law. Such other conditions, which are likely more prevalent within the legal community than chemical dependency, include depression, stress, bi-polar disorder, personality disorders, financial and family problems, and other addictions such as gambling, sex, or food.^{xi} Failure to address and treat these conditions can result in consequences just as severe as drug addiction or alcoholism.^{xii} In recognition of this fact, The Supreme Court in 1998^{xiii} expanded Rule 2-9.11 to provide that the program of assistance for addicted and chemically dependent members would thenceforth include those suffering psychological problems affecting their professional performance. The rule now reads,

The Florida Bar shall create or fund a program for the identification of its members who suffer from impairment related to chemical dependency or psychological problems which affect their professional performance or practice of law, and the assistance of those members in overcoming such dependency or problems.

Where such cases are brought to FLA's attention, either voluntarily or through the Bar, FLA's Clinical Director, will evaluate the attorney and develop a rehabilitation program. In disciplinary cases, FLA will enter into a modified rehabilitation contract with the attorney, acting primarily as liaison between the attorney, the attorney's therapist, and The Florida Bar. FLA is also sponsors a number of weekly facilitated support meetings, led by FLA certified therapists,

for legal professionals suffering from psychological impairments. The first such meeting started in April 1999 in Fort Lauderdale, and have generated an overwhelmingly positive response from participants. They are available to any attorney, law student, or judge dealing with stress or other psychological condition.

Annual Workshop

Each July, FLA sponsors a workshop for attorneys, law students, and judges interested in lawyer impairment, as well as the disciplinary and admissions processes. Presenters include experts in the field of addictionology, representatives from the Bar's Legal Division, the Board of Bar Examiners, attorneys specializing in representation in disciplinary and admissions matters, criminal and family law practitioners, and recovering attorneys themselves. Substance abuse CLE credits are awarded for attendance at the workshop, which not only provides substantive information, but also allows the volunteers from around the state, the FLA staff, and other interested parties the chance to meet on a social basis.

Conclusion

Although not every judge, lawyer, or law student who takes a drink, uses a drug, or has a depressive episode can be considered to be impaired, *continuing* the behavior despite increasingly severe consequences can generally be regarded as evidence of an illness. FLA estimates that of the over 87,000 attorneys admitted in Florida, between 8,000 and 15,000 have had or will have a problem with drugs and/or alcohol during their careers (using 50 years as an average career). Some 10,000 to 18,000 Florida attorneys will experience a debilitating short term or full-blown clinical depression while in practice. In response to these problems, FLA has treated over 3000 attorneys, law students, and judges since its creation in 1986, with approximately 350 currently under contract, of which more than 150 are being monitored for

disciplinary or conditional admission purposes. In follow-up studies performed for peer assistance programs, it was determined that over 80% of participants who successfully completed their contracts remained chemically free and most were successfully practicing. Clearly, the reduction in harm and suffering to the impaired individuals, their families, and the public as a result of these professionals' participation is immeasurable. As has been said by one member of the Florida Bar Board of Governors, FLA is the only Bar funded program which works *directly to save lawyers' lives, their families, and their careers.*

Authors

Myer J. (Michael) Cohen is the Executive Director of Florida Lawyers Assistance, Inc. and sat on the ABA Commission on Lawyer Assistance Programs, with responsibility for the southeast region (Florida, Georgia, Alabama, North and South Carolina, and Tennessee) from 1997-2001, and CoLAP's Advisory Committee from 2002-2006. He currently sits on the ABA Standing Committee on Substance Abuse's Advisory Committee. He served as Chair of The Florida Bar Quality of Life and Career Committee, and currently serves on the Bar's Standing Committee on Professionalism. He previously was in private practice, principally in the area of criminal defense, in Boston, Mass. He received his B.A. from Boston University in 1972, and his J.D. from Suffolk University Law School in 1980. Mr. Cohen is a Certified Employee Assistance Professional (CEAP) and has been in recovery since 1986.

Charles O. Hagan, Jr. is the founder and was the first Executive Director of Florida Lawyers Assistance, Inc. (1986 - 1992). He received his B.S. from The Wharton School, University of Pennsylvania and his J.D. from Temple University School of Law. Mr. Hagan was in recovery from 1969 to his death in 2005.

Footnotes

-
- i. Coombs, R.H., *Drug-Impaired Professionals*, Harvard University Press, Cambridge (1997)
 - ii. *Alcoholics Anonymous*, A.A. World Services, Inc., New York, NY (1935)
 - iii. Erickson, C.K., *Review of neurotransmitters and their role in alcoholism treatment*. *Alcohol & Alcoholism* 31 (Suppl. 1): 5-11 (1996).
 - iv. *The Florida Bar v. Blalock*, 325 So.2d 101 (1976)
 - v. Rule 2-9.11
 - vi. *The Florida Bar v. Headley*, So.2d (1985)
 - vii. Nace, E.P., *Achievement and Addiction: A Guide to the Treatment of Professionals*, Brunner/Mazel, Inc., New York, NY (1995)
 - viii. See Rule 3-5.3, Rules Regulating The Florida Bar
 - ix. Florida Standards for Imposing Lawyer Sanctions 10 and 11
 - x. Johnson, V.E., *Intervention: How to Help Someone Who Doesn't Want Help*, Johnson Institute Books, Minneapolis, MN (1986)
 - xi. Beck, C., Sales, B., Benjamin, G.A., *Lawyer Distress: Alcohol Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & Health, Cleveland-Marshall College of Law (1996)
 - xii. Nace, E.P., *Achievement and Addiction: A Guide to the Treatment of Professionals*, Brunner/Mazel, Inc., New York, NY (1995)
 - xiii. Case No. 92,841 September 24, 1998