

# AVOIDING ETHICAL PITFALLS: THE IMPACT OF ADDICTION AND OTHER MENTAL HEALTH ISSUES ON THE PRACTICE OF LAW

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Environmental Show of the South  
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**“I suppose I’ll be the one  
to mention the elephant in the room.”**

# WHAT IS IMPAIRMENT?

- Mental Health Issues such as Depression or Bi-Polar Disorder
- Alcohol or Drug Abuse and Addiction
- Prolonged and Unrelieved Stress
- Compulsive Gambling
- Any other condition that may adversely impact the individual's personal or professional life.

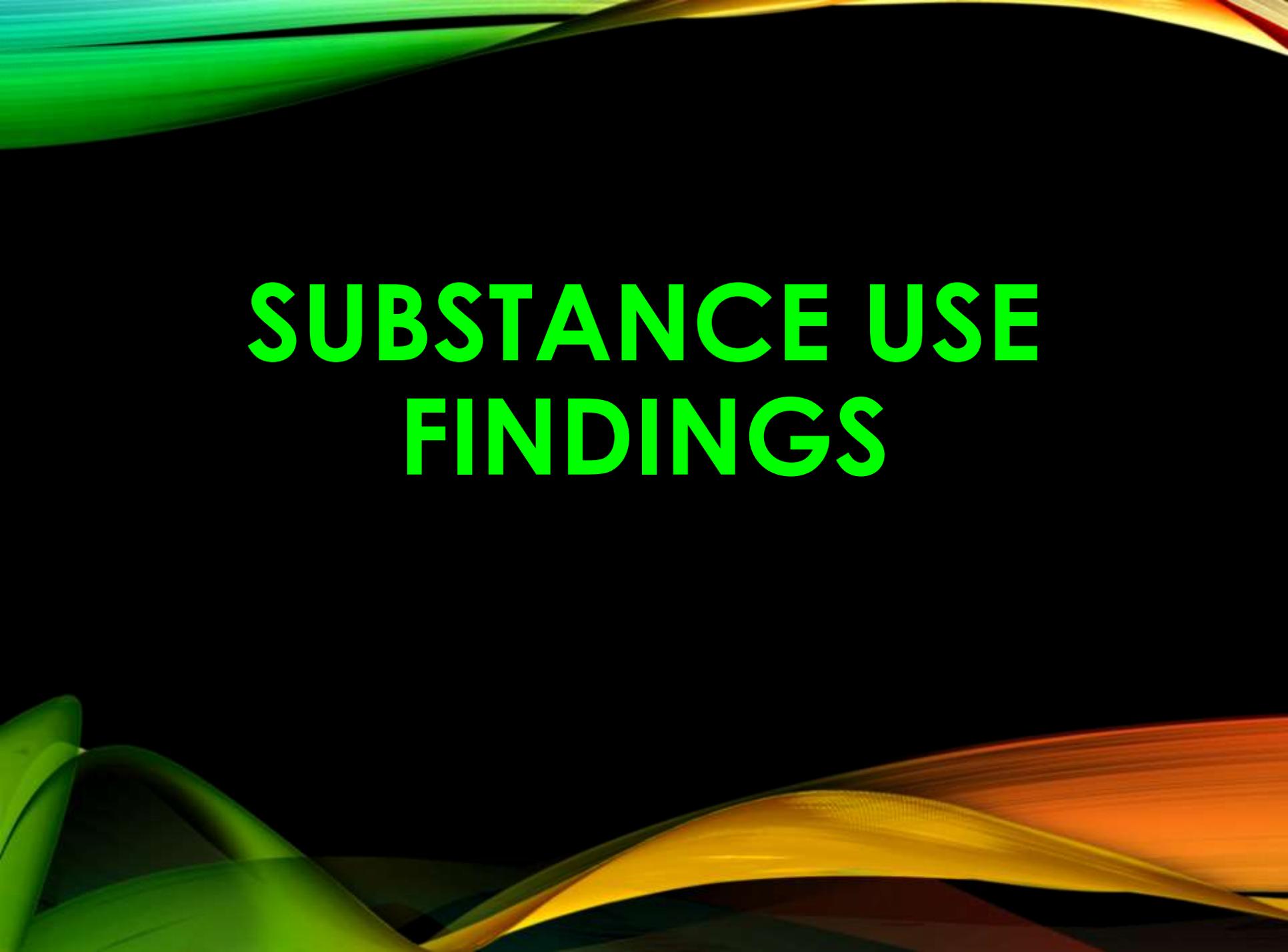
# **2016 ABA/COLAP HAZELDEN STUDY**

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**WHAT WE NEED  
TO KNOW**

# THE DEMOGRAPHICS

- 12,825 licensed employed attorneys & judges
- Males 53.4%
- Females 46.5%
- Transgender .1%
- Diversity of race
  - Asian 1.2%
  - Black/African American 2.5%
  - Caucasian/White 90.9%
  - Latino/Hispanic 2.6%
  - Native American .3%
  - Other .7%
  - Missing .5%



# **SUBSTANCE USE FINDINGS**

# SURVEY TOOLS

- AUDIT 10 –
  - “Alcohol Use Identification Test”
    - Developed by World Health Organization
    - Widespread use by health workers and alcohol researchers
    - Screens for hazardous, harmful and possible alcohol dependence
    - Frequency, Amount, Consequences

# SUMMARY STATISTICS FOR ALCOHOL USE DISORDERS TEST

	AUDIT Statistics			Problematic Percentage*	P Value**	
	<i>n</i>	<i>M</i>	<i>SD</i>			
Total Sample:	11,278	5.18	4.53	20.6%		
<i>Gender:</i>						
	Male:	6,012	5.75	4.88	25.1%	<.001
	Female:	5,217	4.52	4.00	15.5%	
<i>Age Category:</i>						
	30 or younger:	1,393	6.43	4.56	31.9%	<.001
	31-40:	2,877	5.84	4.86	25.1%	
	41-50:	2,345	4.99	4.65	19.1%	
	51-60:	2,548	4.63	4.38	16.2%	
	61-70:	1,753	4.33	3.80	14.4%	
	71 or older:	297	4.22	3.28	12.1%	
<i>Years in Field:</i>						
	0-10 years:	3,995	6.08	4.78	28.1%	<.001
	11-20 years:	2,523	5.02	4.66	19.2%	
	21-30 years:	2,272	4.65	4.43	15.6%	
	31-40 years:	1,938	4.39	3.87	15.0%	
	41 or more years:	524	4.18	3.29	13.2%	

# AUDIT-10 RESULTS

- **20.6 %** scored at a level consistent with problematic drinking-Using Audit 10 = problem behaviors and levels of use
- Problematic drinking = hazardous drinking and possible dependence
- More males (25.1%) than females (15.5%) among lawyers
- **32% of lawyers under 30**
- Position in the field
  - Higher scores for lawyers in private firms &
  - Bar Associations

# **IMPACT OF AUDIT SCORE ON MENTAL HEALTH**

- **The higher your AUDIT Score – the higher your anxiety and depression scores**
- **Direct correlation**

# GENERAL POPULATION – ALCOHOL USE DISORDER

6.4%



# LAWYERS – ALCOHOL USE DISORDER

20.1%



# AUDIT-C

- The AUDIT Alcohol Consumption Test (AUDIT-C) is a 3-question screening test for problem drinking which can be used more quickly more quickly than the AUDIT-10, and in a doctor's office.
- The focus on the abbreviated AUDIT-C is frequency and amount only, without addressing consequences of use

# AUDIT-C

Questions	Scoring system					Your score
	0	1	2	3	4	
How often do you have a drink containing alcohol?	Never	Monthly or less	2 - 4 times per month	2 - 3 times per week	4+ times per week	
How many units of alcohol do you drink on a typical day when you are drinking?	1 -2	3 - 4	5 - 6	7 - 9	10+	
How often have you had 6 or more units if female, or 8 or more if male, on a single occasion in the last year?	Never	Less than monthly	Monthly	Weekly	Daily or almost daily	

# GENERAL POPULATION – ALCOHOL USE DISORDER

6.4%



# LAWYERS – AUDIT-C ALCOHOL USE DISORDER

35.6%

(Compare MDs @ 15%)



# RISKS OF FREQUENT DRINKING

- The more you drink, the more likely you are to suffer from **anxiety and depression**.
- People who drink 6+ drinks per week more likely to have symptoms of **depression and anxiety** than those drinking less, regardless of age.
- For women in their 20s and 40s, **the lowest rates of symptoms** were in those who did not drink at all.

# SELF-REPORTING CONCERNS

- 22.6% felt their use of alcohol or substances was a problem sometime during their lives
- 27.6% reported problematic use prior to law school
- 14.2% reported problematic use started during law school
- **47.7 % reported problematic use started within the first 15 years following law school**
- 14.5% reported problematic use started more than 15 years after law school.

# Why are Lawyers So Vulnerable?

- Professionalism at all costs
- Perfectionism
- Competitiveness
- “Type A” Personalities
- Unable to acknowledge our own humanity
- Increased Stress
- Longer work Hours

# WHY ARE LAWYERS SO VULNERABLE?

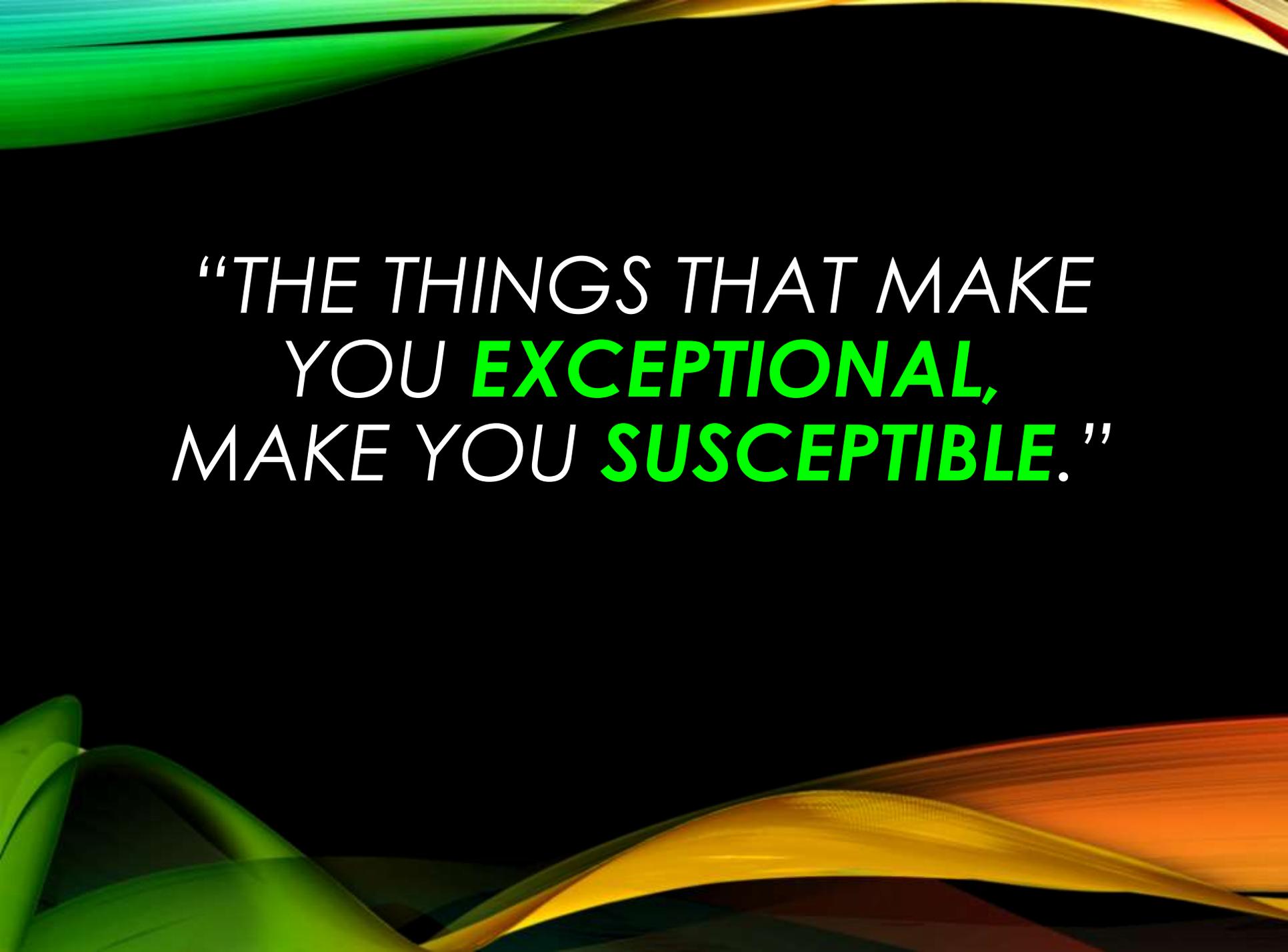
- Lawyers work in a chronically anxious and stressful state -- we're constantly on point.
- Advocacy and adversity by their very natures are stressful. There are very few other professions that have this type of stress on a repetitive basis.

# THINK ABOUT COCO



# PESSIMISM

- Johns Hopkins study reported in *all* graduate school programs in *all 104 professions* except one, Optimists outperformed Pessimists
- Law students were the exception
- Pessimism helps us excel as lawyers
- Pessimism leads to stress and disillusionment which makes us vulnerable to depression



“THE THINGS THAT MAKE  
YOU **EXCEPTIONAL**,  
MAKE YOU **SUSCEPTIBLE.**”

# RELATIONSHIP BETWEEN ANXIETY AND ADDICTION

- Lawyers report higher levels of anxiety including stress associated with success
- Since addiction is often a disease of unmanaged anxiety and stress, there is a link between mental health problems and addiction
- Addiction and mental health problems frequently coexist and BOTH must be treated for a successful recovery

# HOW STRESS MAY LEAD TO ADDICTIONS

- ◆ If chronic stress begins to be perceived as insurmountable, it gives rise to helplessness.
- ◆ Helplessness may be so generalized that the lawyer is unable to accomplish tasks that they could actually master. (i.e., can't get a motion for trial date filed; can't return a simple phone call).
- ◆ Helplessness is the pillar of a depressive disorder.
- ◆ Lawyers are VERY uncomfortable with helplessness. Perfectionists: hence denial – leading to even more anxiety

# SO WHAT HAPPENS?

Over time, this type of chronic anxiety causes the release of too much of the fight-or-flight hormones, cortisol and adrenaline.

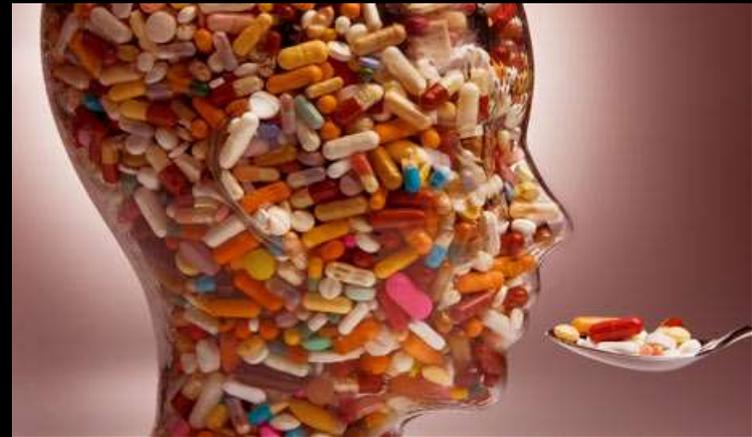
The amygdala and the hippocampus are part of the limbic brain, which is the seat of the value judgments that we make, often unconsciously, that exert such a strong influence on our behavior.

Research shows that clearly prolonged release of cortisol damages the hippocampus (involved in learning and memory), and the amygdala (involved in how we perceive fear), which are the parts of the brain that have been implicated in depression.

# SEEK PROFESSIONAL HELP IF:

- If you're not sure stress is the cause or if you've taken steps to control your stress but your symptoms continue. Your doctor may want to check for other potential causes.
- If you have chest pain, especially if it occurs during physical activity or is accompanied by shortness of breath, sweating, dizziness, nausea, or pain radiating into your shoulder / arm, get emergency help immediately. These may be warning signs of a heart attack and not simply stress symptoms.

# MENTAL HEALTH ISSUES



# **IMPACT OF AUDIT SCORE ON MENTAL HEALTH**

- **The higher your AUDIT Score – the higher your anxiety, stress and depression scores.**
- **Direct correlation.**

"IF STRESS IS CHRONIC, REPEATED CHALLENGES MAY DEMAND REPEATED BURSTS OF VIGILANCE. AT SOME POINT THE VIGILANCE BECOMES OVERGENERALIZED LEADING US TO CONCLUDE THAT WE MUST ALWAYS BE ON OUR GUARD – EVEN IN THE ABSENCE OF STRESS. AND THUS THE REALM OF ANXIETY IS ENTERED."

DR. ROBERT SAPOLSKY, *LAWYERS WITH DEPRESSION,*  
*THE STRESS DEPRESSION CONNECTION,* MAY 11, 2008.

[WWW.LAWYERSWITHDEPRESSION.COM](http://WWW.LAWYERSWITHDEPRESSION.COM)

# GENERAL POPULATION RATES OF MAJOR DEPRESSIVE EPISODE

6.6%

# LAWYER RATE OF MAJOR DEPRESSIVE EPISODE

28%

# Lawyers and Depression

- Lawyers top the list of professions when it comes to depression
  - John Hopkins Study of 103 Professions
- Lawyers are four times more likely to be clinically depressed than the #2 profession
- Lawyers have one of the highest suicide rates of any profession (second to dentists)
- Male lawyers twice as likely as general population

# DEPRESSION AND SUICIDE

- “Not everyone who is depressed commits suicide. But nearly everyone who commits suicide is depressed.”
- Lawyers suffer from depression at a rate 3.6 times higher than any other profession (Johns Hopkins Study).
- On average, people with depression go for nearly a decade before receiving treatment.
- It is believed that lawyers go much longer without seeking help because of the greater amount of shame and the erroneous presumption that because we help others we must be able to help ourselves.

# SUICIDE AND THE PRACTICE OF LAW

“Risk factors for suicide include depression, anxiety, substance abuse, divorce and stress. Lawyers experience ALL of these risk factors at a higher rate than the general population.”

“Lawyers are also more likely to be perfectionists and competitive, personality traits which make a person considering suicide less likely to seek help.”

Larry Berman, Executive Director  
American Association of Suicidology

# SUICIDE AND THE PRACTICE OF LAW

Male lawyers between the ages of 20 and 64 are more than twice as likely to die from suicide than men of the same age in other occupations.

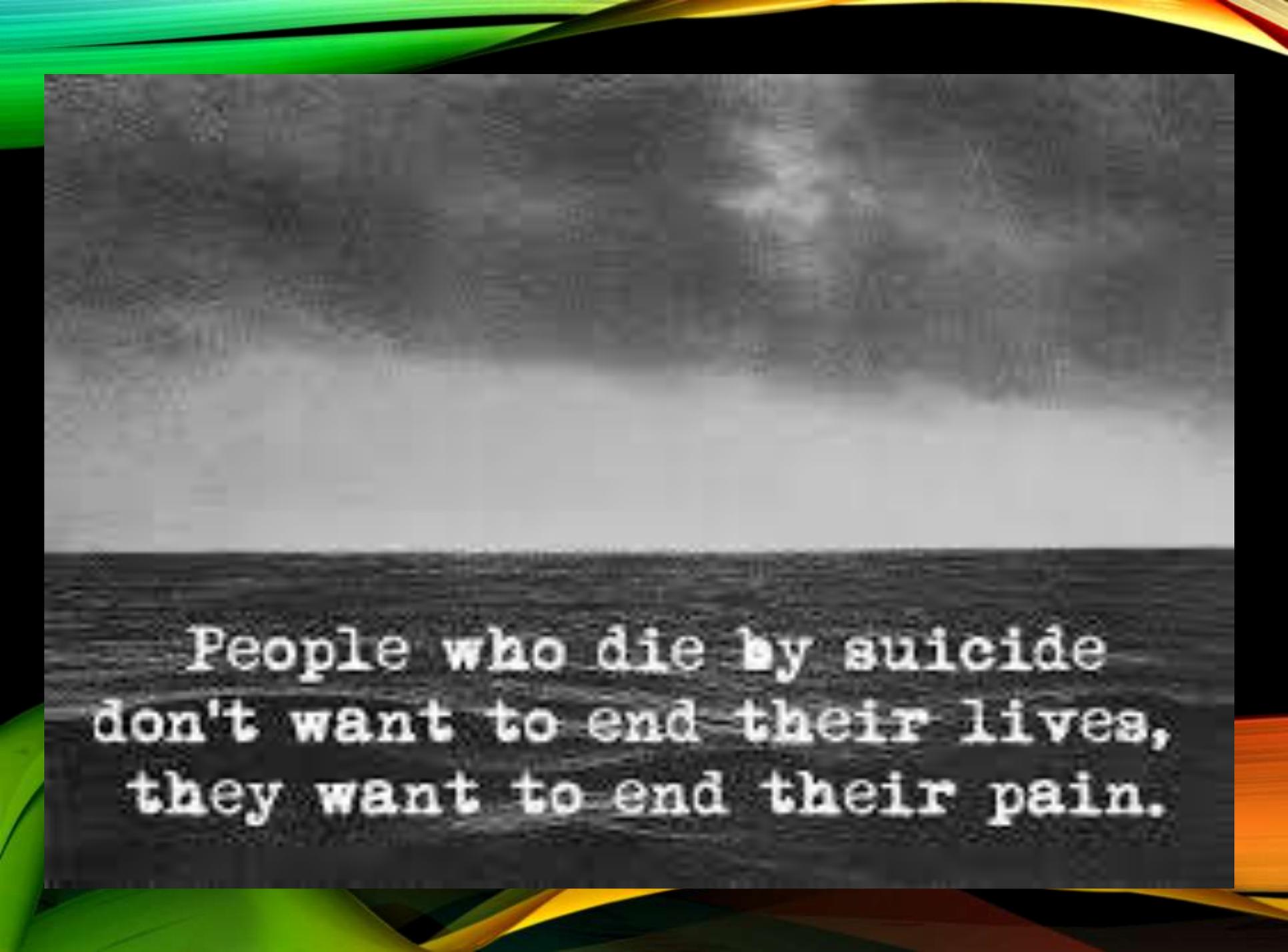
National Institute for Safety and Health Study

Suicide was the 3rd leading cause of death among lawyers insured by the Canadian Bar Insurance Association. (It's the 10th leading cause of death in US in general)

Canadian Bar Association Study

Suicide Rate among lawyers is about 69 deaths per 100,000. For the general population it's 13 deaths per 100,000.00. Lawyers are 6 times higher than general population.

National Institute of Mental Health



People who die by suicide  
don't want to end their lives,  
they want to end their pain.

# Lawyer Self Care

- Lawyers:
  - Do a poor job of taking care of themselves
  - Work more hours than almost any other profession
  - Are reluctant to seek help for themselves
  - Set unrealistic expectations for themselves



# **ETHICAL ISSUES**

**RULES, RISKS AND REMEDIES**

# Relationship between Lawyer Impairment and Errors in Judgment

- 40-75% of discipline cases involve a substance abuse or psychological issue (Illinois Survey)
- 80% of Client Protection Fund cases involve chemical dependency or a gambling component (Louisiana Study)

# 2011 Oregon Survey

- Malpractice AND discipline complaint rates for lawyers before recovery are nearly 4 TIMES HIGHER than they are after recovery.
- Malpractice AND discipline complaint rates for lawyers in recovery are LOWER than that of the general lawyer population.

# RELATIONSHIP BETWEEN LAWYER IMPAIRMENT AND ERRORS IN JUDGMENT

## **ABA Model Rule 1.1 Competence:**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill thoroughness and preparation reasonably necessary for the representation.

### **Comments:** Thoroughness and Preparation:

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. **It also includes adequate preparation.** (The more difficult the case, the more preparation and “elaborate treatment” required).

# RELATIONSHIP BETWEEN LAWYER IMPAIRMENT AND ERRORS IN JUDGMENT

## **ABA Model Rule 1.3 Diligence:**

A lawyer shall act with reasonable diligence and promptness in representing a client.

# RELATIONSHIP BETWEEN LAWYER IMPAIRMENT AND ERRORS IN JUDGMENT

## **ABA Model Rule 1.4 Communication:**

A lawyer should keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

A lawyer should explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

# RELATIONSHIP BETWEEN LAWYER IMPAIRMENT AND ERRORS IN JUDGMENT

## **Rule 5.1 Responsibilities Of Partners, Managers, And Supervisory Lawyers**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

# RELATIONSHIP BETWEEN LAWYER IMPAIRMENT AND ERRORS IN JUDGMENT

## **(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:**

(1) the lawyer orders or, with knowledge of the specific conduct, **ratifies** the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and **knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

# **ETHICS AT RISK TEST II**

PREPARED BY DR. GREGORY BROCK,  
UNIVERSITY OF KENTUCKY.

ASK YOURSELF THESE QUESTIONS, TO  
CHECK YOUR CONDUCT AND MAKE  
ADJUSTMENTS.

The background features a black field with abstract, flowing, translucent waves. The top wave is primarily green with a yellow-orange gradient. The bottom wave is primarily orange with a yellow-green gradient. The waves appear to be moving across the frame, creating a sense of motion and depth.

# LAWYER SELF-CARE

# METHODS AND MODALITIES TO IMPROVE CHRONIC STRESS AND ANXIETY

- Mindfulness / Meditation
- Therapeutic Yoga
- Wellness in the Workplace
- Desk Alternatives / Remote Practice
- Support / Encouragement

# WHAT CAN I DO?

- Your Lawyer Assistance Program is there to help you
- They can help you assess the problem
- They will help you find treatment for the problem
- You can connect you with other lawyers with the same problem
- Help with Disciplinary matters



Who will know I asked for help?

Will my friend know I reported  
them?

- IN MOST STATES, CONTACT and REFERRALS TO LAP IS CONFIDENTIAL.
- CERTAIN EXCEPTIONS FOR S.CT. REFERRALS AND YOUR WAIVER.

DO

— *what* —

YOU

— *love* —

LOVE

— *what* —

YOU

— *do* —