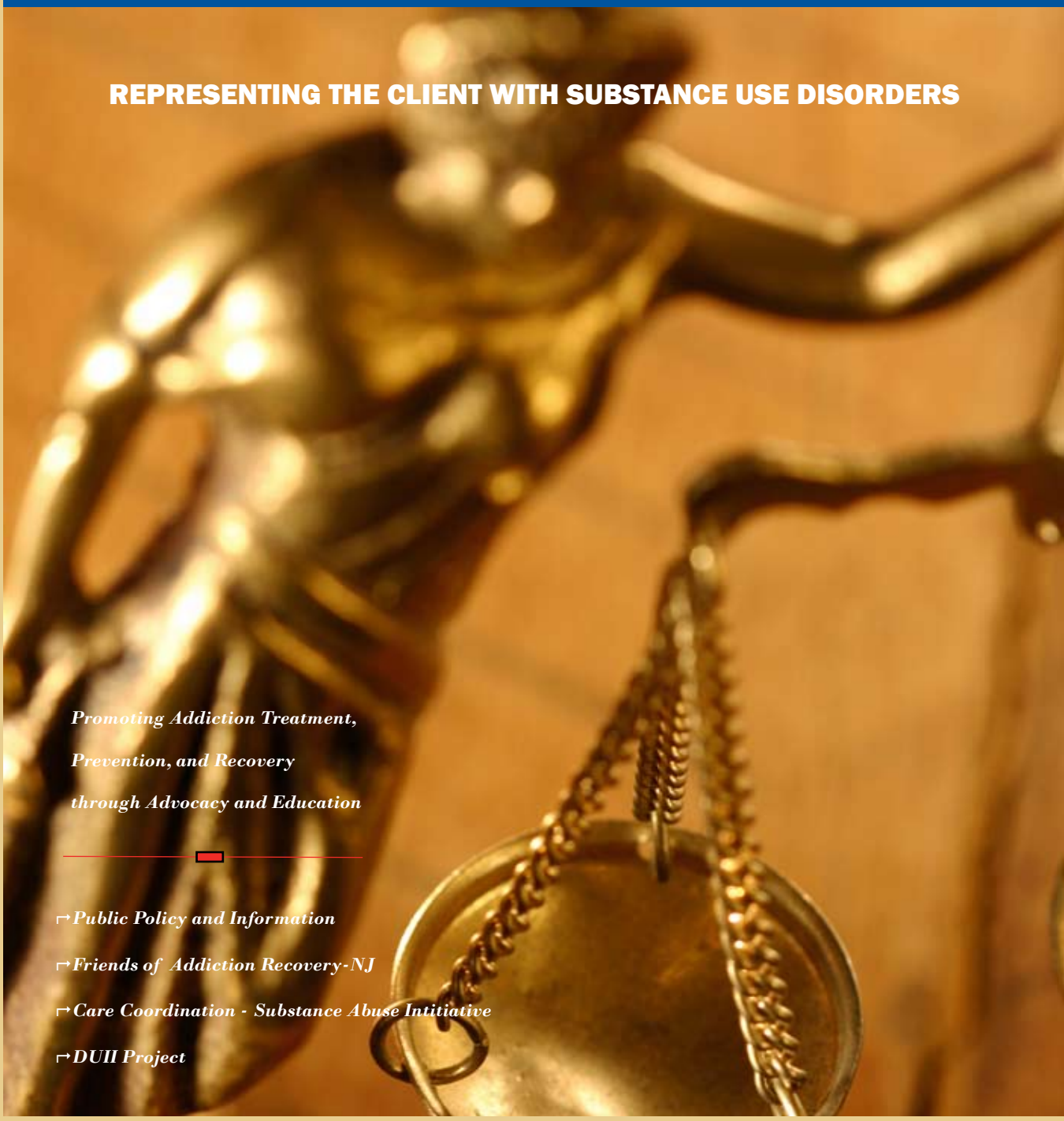
NCADD NEW JERSEY

ATTORNEY TOOLKIT: SUBSTANCE USE DISORDERS



REPRESENTING THE CLIENT WITH SUBSTANCE USE DISORDERS

Promoting Addiction Treatment,
Prevention, and Recovery
through Advocacy and Education

- *Public Policy and Information*
- *Friends of Addiction Recovery-NJ*
- *Care Coordination - Substance Abuse Intitiative*
- *DUII Project*

NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE - NEW JERSEY
www.ncaddnj.org

REPRESENTING A CLIENT WITH SUBSTANCE USE DISORDERS

NCADD-NJ- Promoting Addiction Treatment, Prevention and Recovery Through Advocacy and Education

There is a lack of understanding by the public and by many lawyers and judges about addiction, treatment, and recovery. As a lawyer, you are in a unique position to help your client overcome their addiction. The best resolution to your case may hinge on identifying addiction as the underlying problem, assisting your client in obtaining treatment, and educating judges about addiction, treatment, and recovery.

To effectively resolve your case, you must be able to overcome the stigma associated with this disease. You need to be prepared to explain addiction, the effectiveness of treatment, and demonstrate to the court that your client has taken steps to address their substance use disorder, in other words, that your client has entered or is in the process of entering a treatment program or is participating in other self help programs.

This primer is intended to provide you with necessary background and facts that can be used in all legal contexts.

addiction treatment recovery

AS A LAWYER, WHY IS IT IMPORTANT TO BE KNOWLEDGEABLE ABOUT SUBSTANCE USE DISORDERS, TREATMENT, AND RECOVERY?

Alcohol and drug addiction is one of the most serious health problems facing our society. It affects millions of people, devastates families, individuals, and communities, and overwhelms our legal system. In 2005, an estimated 19.7 million Americans were current illicit drug users, and 16 million were heavy drinkers.[1] In New Jersey there are 636,000 people who are dependent upon or abuse drugs or alcohol, 573,000 of these people need treatment but have not gotten it.[2] Addiction affects one in three families in New Jersey.[3]

Addiction knows no boundaries. It is a disease that can affect every area of one's personal, communal, and professional life. It is a disease that can affect anyone, regardless of age, race, cultural background, financial status or profession. The addict is not only the person on the side of the road with a needle in their arm or a jug of cheap wine in a bag, though that is the image many still have of people with this disease. In fact, 77% of those characterized with abuse of or dependence on alcohol or drugs are employed. An addict is the person you work with, the person next door, or the person walking into your office with an array of legal problems. He or she may also be your father, your sister, or your daughter.

Many people who begin using alcohol or drugs socially or escape some problem unwittingly cross over the line into involuntary drug/alcohol use. They find themselves struggling with an addiction and consequences that arise from that addiction.

People whose existence is drug- or alcohol- driven or whose judgment is clouded by intoxication often do not exercise law-abiding self-control. The issues that arise from addiction-driven behavior often end up in our legal system in a variety of contexts, including criminal, civil, child welfare, family law, traffic, housing, employment, and other business related problems.

There is a lack of understanding by the public and by many lawyers and judges about addiction, treatment, and recovery. As a lawyer, you are in a unique position to help your client overcome their addiction. The best resolution to your case may hinge on identifying addiction as the underlying problem, assisting your client in obtaining treatment, and educating judges about addiction, treatment, and recovery.

To effectively resolve your case, you must be able to overcome the stigma associated with this disease. You need to be prepared to explain addiction, the effectiveness of treatment, and demonstrate to the court that your client has taken steps to address their substance use disorder, in other words, that your client has entered or is in the process of entering a treatment program or is participating in other self help programs.

This primer is intended to provide you with necessary background and facts that can be used in all legal contexts. However, it does not address the legal issues of each area of law.

ADDICTION IS A MEDICAL DISEASE

Although there are social consequences resulting from addiction, it is a medical problem, not a social one. Despite scientific research demonstrating that addiction is a chronic lifelong disease that needs ongoing care, much like diabetes, hypertension, etc., the public and many lawyers and judges have not yet embraced this concept. This causes many in the legal system who come in contact with it to push for harsh penalties rather than appropriate treatment and to view a relapse as a treatment failure rather than the need for ongoing disease management.

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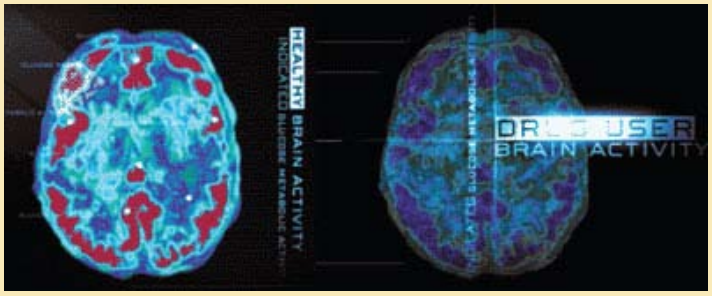
Addiction involves multiple factors-biology, environment, and brain mechanisms. Although the term "addiction is a disease" has become commonplace, public opinion polling shows that 40% of New Jerseyans continue to view it as a moral failing. When you explore the issue more deeply, even those that say it's a disease are ambivalent and would feel differently around someone in recovery.[4]

The public, attorneys, and judges may think if drugs and alcohol are causing the problems, why don't users simply stop? Why don't they stay stopped? A task much easier said than done. Recognizing addiction as a chronic, relapsing, brain disorder can explain why a person cannot just stop or why a person may relapse. At some point, changes occur in the brain that can turn drug/alcohol use into addiction-compulsive drug cravings and usage from which they cannot *just* stop. They have an illness that requires biomedical treatment.[5]



Neuro-imaging demonstrates the difference between brain activity in a healthy adult versus a drug user.

> According to neuroscientists…Addiction is considered a brain disease because it alters the brain in fundamental, long-lasting ways… Neuro-imaging techniques… have documented actual changes in the size and shape of nerve cells in the brains of addicts. Coming down from a drug high is caused by a decrease in dopamine levels. If you force brain cells to produce excessive dopamine on a regular basis, they become stressed and produce less dopamine. Over time, addicts become depressed and need drugs just to stimulate dopamine to normal levels. They become trapped in a cycle of cravings and addiction to avoid withdrawal symptoms and depression.[6]

Using drugs repeatedly over time changes brain structure and function in fundamental ways that can persist long after the individual stops using them. As stated by Alan I. Leshner, director of the National Institute on Drug Abuse at the National Institutes of Health, "long-lasting brain changes are responsible for the distortions of cognitive and emotional functioning that characterize addicts, particularly including the compulsion to use drugs that is the essence of addiction. It is as if drugs have high-jacked the brain's natural motivational control circuits, resulting in drug use becoming the sole, or at least the top, motivational priority for the individual."[7]

Leshner believes that "once a person crosses the line from user to addict, the brain is so changed that he/she can no longer control their behavior." [8] Although drug or alcohol use may start out voluntarily, addiction is not a voluntary behavior. It is a different state.[9]

Refer to resource page for more information about addiction as a medical disease.

TREATMENT WORKS

Research shows that substance use disorders are chronic, relapsing medical conditions that can be effectively treated.[10] Nearly two decades of treatment research shows that treatment is effective and results in a clinically significant reduction in alcohol and drug use and crime, and improves the health and social functioning, of many clients. Economic studies consistently find net economic benefits from alcohol and other drug treatment in terms of reduced crime, reduced incarceration and victimization costs, and post-treatment reduction in health care costs.[11]

A major study published in the Journal of the American Medical Association in 2000 is one of several studies that demonstrate the effectiveness of treatment for substance use disorders. The study found that treatments for alcohol/drug use disorders are just as effective as treatments for other chronic conditions, such as high blood pressure, asthma, and diabetes.[12]

Evidence of the effectiveness of treatment can also be found in New Jersey Drug Courts. As of March 2007,

1,249 participants successfully commenced to the final stage or graduated; 93% were employed at the time of graduation, 95% of the drug tests were negative.[13] Significantly reduced drug use was found even among participants who did not graduate from the program. A study commissioned by the National Institute of Justice found that of offenders who were imprisoned for drug offenses, 43.5% were rearrested within the first year of their release and 58.6% within the second year. In New Jersey, within three years of graduating from Drug Court, the re-arrest rate for graduates was 14% and the reconviction rate for new indictable offenses was 7%.[14] *Refer to resource page for more information about treatment works.*

REFERRING YOUR CLIENT FOR AN EVALUATION AND TREATMENT

Lawyers are in a unique position to make a difference in the lives of their clients and also improve the outcome of their case by addressing issues of addiction and referring clients to appropriate treatment programs before they go to court. Participation in treatment can often improve the outcomes of a case, but more importantly, it can help return some stability to the client's life.

First and foremost, for any illness, including a substance use disorder, a treatment decision must be made by a qualified health professional, not by a judge, a lawyer, or the legislature. Currently, there are some statutes that define the type and duration of treatment based on the crime a person may have committed, rather than based upon qualified medical advice, using a proven standardized measurement.[15]

When health professionals do not make decisions, your client may not get the treatment they need in terms of intensity or duration. Treatment decisions have been driven by a combination of not understanding addiction as a chronic illness and the extreme discrimination faced by persons seeking treatment for a substance use disorder. If patients don't get enough treatment, then their addiction will continue and any money spent on treatment may be wasted. They will only end up revolving in and out of detox, emergency rooms, mental health facilities and physicians' offices. Likewise, if patients get more treatment than they really need, money and time is also wasted.

THE EVALUATION PROCESS

The first step in ensuring your client obtains appropriate treatment is to refer him or her for a complete evaluation. Once the evaluation is completed, you will want to have a copy of it available to ensure that the court's decision is based on the evaluation.

The evaluator will most likely rely upon the ASAM-Patient Placement Criteria to determine the type and duration of treatment, if any, your client needs. The ASAM-PPC is the most widely used and comprehensive national instrument for placement, continued stay, and discharge of individuals with alcohol and other drug problems. The ASAM- PPC places patients in the appropriate level of care, thereby avoiding less effective under treatment as well as expensive over treatment.[16]

The following are places you may look to obtain an evaluation for your client:

- County Alcoholism and Drug Abuse Offices
- Treatment Assessment Services for the Courts (TASC)
- Intoxicated Drivers Resource Centers (IDRC)

Once the evaluation is complete, you will want to refer your client to a treatment program before they go to court. An evaluation coupled with your client being in treatment or scheduled to enter a particular treatment program goes a long way in ensuring the court follows the recommended treatment and agrees with your position. *Refer to resource page for more information about the evaluation process.*

TREATMENT MODALITIES

A variety of approaches are used in treatment programs to help clients deal with cravings, possibly avoid relapse, and learn to manage their condition. Treatment may entail many interventions and attempts at abstinence and can occur in a variety of settings, in different forms, and for different periods of time. Addiction treatment must address the needs of a wide range of individuals of all ages, receiving treatment at different points in the progression, and experiencing different levels of physical, mental or social impairment as a result of the disease. Therefore, no one size fits all.

As with other brain diseases such as schizophrenia and depression, the data shows that the best addiction treatment approaches attend to the whole individual, combining the use of:

- Medication Assisted Treatment (when needed)
- Cognitive/behavioral therapies
- Psychosocial (motivational)
- Community reinforcement
- 12 step self-support groups
- Engagement
- Attention to necessary social services and rehabilitation.

Treatment then takes place within a care continuum that includes:

- Active treatment, including stabilization, early recoverytreatment, and management of co-morbidities (such as mental illness)
- Continuing engagement as part of a longer-term chronic care plan.

Some of the more common treatment settings are:

- Long-term inpatient
- Short-term inpatient
- Partial hospitalization
- Intensive outpatient
- Outpatient
- Brief Intervention

There are two websites that list treatment programs available in New Jersey:
- NCADD-NJ Treatment Locator
- Department of Human Services, Division of Addiction Services

Medication Assisted Treatment is probably the most stigmatized and controversial of the treatment modalities. For appropriate patients, however, there is solid evidence that pharmacotherapy provided by trained clinicians in combination with psychosocial therapy is effective.[17]

> Opioid addiction is a medical disorder that can be treated effectively with medications when they are administered under conditions consistent with their pharmacological efficacy and when treatment includes necessary supportive services such as psychosocial counseling, treatment for co-occurring disorders, medical services and vocational rehabilitation.[18]

Some people need formal treatment to recover, while others are able to recover using self-help groups. Courts are more apt to accept treatment as the means to recovery as there is no professional to assess and monitor one's progress in a self-help group. Many judges do not understand how the self-help group works and how it fosters abstinence and long-term recovery.

If your client is engaged in a self-help program, it is important that they document their attendance at meetings. It is also important that someone be prepared to explain how the program works and how people remain abstinent, grow and recover by using the program. Although anonymity is a core principle in these programs, if your client is truly involved in such a program they can usually find a sponsor or someone with longer-term sobriety and clean time to come to court with them and attest to their active involvement and growth in recovery.

There will likely be a waiting list for treatment so participation in self-help groups during that time can help the person remain abstinent and show their motivation for sustaining long term recovery.

Refer to resource page for further information about treatment modalitites.

WHAT ABOUT THE CLIENT THAT RELAPSES?

It is important to remember, addiction's effects on the brain last long after the person abstains from use. The brain does heal, but it takes time. Through classical conditioning, environmental cues are paired with the initial drug use experiences. Exposure to those cues automatically triggers cravings that can lead to relapse. Relapse does not mean a treatment failure; it merely means that your client needs ongoing care.

Your client will need ongoing care. If you are successful in educating judges about the chronic nature of the disease of addiction, then relapse will not be viewed as a failure.

Scientific research conducted over the past ten years by NIDA, NIAAA and SAMHSA[19] has concluded that a substance use disorder is a chronic disease with similarities to asthma, hypertension and diabetes and requires ongoing disease management. Without an understanding of the chronic nature of this disease, our court system will continue under the misconception that stabilization and symptom reduction amounts to treatment through which a person is "cured," and a relapse means the person has failed.

Although some addicts do gain full control over their drug or alcohol use after a single treatment episode, some have relapses. Dr. David Lewis from Brown University and Dr. Thomas McLellan from the University of Pennsylvania are two of the leading figures in providing the research and disseminating the findings. Their work demonstrates that people treated for addictive diseases have a higher compliance rate than those treated for other chronic diseases, such as asthma, hypertension and diabetes.[20] In fact, a study done by McLellan demonstrates that relapse rates for substance use disorders (60%) are less prevalent than those for hyperertension (70%) and asthma (70%), and only slightly higher than those for diabetes (50%).[21]

If you are successful in educating judges about the chronic nature of this disease, then relapse will not be viewed as a failure.

DIFFERENCE BETWEEN TREATMENT AND RECOVERY

The distinction between treatment and recovery is important. For many people, treatment is a path toward recovery. Treatment focuses on symptom reduction and may include dealing with cravings, breaking through denial, addressing pathology and deficits, learning coping strategies, and providing an introduction to self-help groups.

"Recovery from alcohol and drug problems is a process of change through which an individual achieves abstinence and improved health, wellness, and quality of life."[22] It is a highly personal process, one that continues through one's lifetime and affects all aspects of an individual's life-social, vocational, spiritual and certainly family and friends.

Public opinion research shows that the public does not understand what it means to be in recovery. People polled believed that the term "in recovery" means they are trying to stop using alcohol and other drugs and the term "I'm a recovering addict" reinforces the idea that the person is still struggling with active addiction.[23]

NEW JERSEY'S LAW AGAINST DISCRIMINATION & THE FEDERAL AMERICANS WITH DISABILITIES ACT

Discrimination against people in treatment and in recovery from a substance use disorders is not only wrong but also is often illegal. Our society grapples with finding an acceptable interpretation that recognizes addiction as an

illness without denying an element of personal responsibility. Thus, although the Law Against Discrimination (LAD)[24] and the Americans with Disabilities Act (ADA) provide some protection for people addicted to alcohol and drugs, there are many conditions and restrictions placed on these disabilities. The LAD and ADA provide limited protection from discrimination for recovering alcoholics and drug addicts.

The definition of "current drug use", "direct threat" and "undue hardship" have been the subject of much litigation.

WHEN IS A PERSON WITH A SUBSTANCE USE DISORDER PROTECTED UNDER THE LAW AGAINST DISCRIMINATION?

The New Jersey Law Against Discrimination (LAD) makes it unlawful to treat people differently based on a mental or physical disability or perceived disability. Whether a person has a disability is decided on an individualized, case-by-case basis. Under the Law Against Discrimination "disability means… a psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical orlaboratory diagnostic techniques."[25]

Alcoholism that meets these conditions is considered a disability.[26] Drug addiction that meets these conditions may be a protected disability only under certain conditions.[27] [28]

People who **currently** engage in illegal drug use are not protected. However, illegal drug use is a protected disability when the person [29]: (1) Is no longer using illegal drugs; (2) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use; or (3) Is participating in a supervised rehabilitation program and is no longer engaging in such use.

The ADA, and by incorporation, the LAD, prohibit the denial of health services or services provided in connection with drug rehabilitation to an individual on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.[30]

Although persons with alcohol dependence are more broadly covered than those with addictions to illegal drugs, neither receives blanket protection. Neither a person with alcoholism or drug addiction is protected if they pose a direct threat to the safety of others or to themselves, nor is misconduct that may be related to their substance use disorder necessarily protected. Disabled persons seeking protection under the LAD/ADA are held to the same performance standards as nondisabled persons. Employers are also permitted to ensure that a work place is free from alcohol and drugs.

Drug tests are permitted prior to employment and during employment.

Once you are able to show that a client with a substance use disorder has a disability, reasonable accommodations must be made to address the disability, so long as it does not create an undue hardship. New Jersey courts have interpreted reasonable accommodation to mean providing where feasible one opportunity for rehabilitation.[31] Other reasonable accommodations may include time off to attend counseling appointments, or a change in job responsibilities.

The definitions of "current drug use", "direct threat" and "undue hardship" have been the subject of much litigation.[32] Current drug use is defined to mean, "the illegal use of drugs occurred recently enough to justify

an employer's reasonable belief that involvement with drugs is an ongoing problem."[33] It is not limited to the day of use or recent weeks or days. Direct threat has been interpreted to mean that there is a reasonable certainty that such handicap would probably cause injury. Both are determined on a case-by-case basis.
Refer to resource page for more information about protection under the LAD and ADA.

PROTECTING YOUR CLIENTS PRIVACY RIGHTS

The regulations that protect the confidentiality of persons in alcohol or drug abuse treatment can be found in title 42, part 2, of the Code of Federal Regulations[34] and in the HIPAA privacy rule.[35]

People will more likely seek and succeed in treatment if it is confidential. Thus, the general rule is that drug or alcohol abuse programs may not disclose, directly or indirectly, any information regarding former, current, or would-be patients. This includes the client's identity, records, protected health information,[36] or testimony about a patient's treatment.

Discrimination against people in treatment and in recovery from substance use disorders is not only wrong but also is often illegal.

Despite this rule, most requests for information can be accommodated by one or another exception to the rule. A program may disclose information about your client if your client authorizes it by signing a valid consent form,[37] by a court order following specific procedures,[38] [39] if your client commits a crime on program premises or against program personnel, or if there is a medical emergency,[40] or if there is child abuse or neglect. The two most common exceptions are when a client signs a consent form and when a court orders disclosure of confidential information.

Before your client goes into treatment, review what it means to sign the release, what is required in a valid consent form, and when, if, and under what conditions a court may order the release of confidential information.[41] When a client is involved in the legal system, they often feel pressured to sign consent forms, are required to sign them, or do not understand what they are signing.
Refer to resource page for more information about protecting your client's privacy rights.

REMEDIES

There are government agencies set up to investigate complaints that involve violations against the Law Against Discrimination and the Fair Housing Act.

The New Jersey Division on Civil Rights enforces the Law Against Discrimination. You can file an administrative complaint with the Division within 180 days of the date of the alleged violation. If the complaint involves housing, you can also file a complaint with the US Department of Housing and Urban Development. If the complaint involves an owner-occupied two-family home, you can go to a fair housing organization in your county. If the complaint involves the Americans with Disability Act, you may file a charge with the Equal Employment Opportunities Commission.

In the alternative, you can go directly to the New Jersey Superior Court within two years of the alleged violation and sue the person who discriminated against your client.
Refer to resource page for more information about remedies.

CONCLUSION

Representing a client with a substance use disorder can be complicated. It will be successful if you are able to educate other attorneys and judges about addiction, treatment and recovery. Your client will benefit from your understanding of these issues, and perhaps get the help they need to recover. Furthermore, it will help to untangle the legal issues that arose from their disease. Such understanding will ultimately improve your case and its outcome.

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RESOURCES

Addiction Is a Medical Disease

Addiction Is a Brain Disease
http://www.ncaddnj.org/pdf/AddictionBrainDisease.pdf

The Science of Addiction
http://www.ncaddnj.org/pdf/ScienceAddiction.pdf

Treatment Works

McLellan, A.T. et al., JAMA, Vol 284(13), October 4, 2000

The Evaluation Process

County Alcoholism and Drug Abuse Offices
http://www.state.nj.us/treasury/gcada/

Treatment Assessment Services for the Courts (TASC)
http://www.judiciary.state.nj.us/criminal/crtasc.htm

Intoxicated Drivers Resource Centers (IDRC)
http://www.state.nj.us/humanservices/das/idrc.htm

Treatment Modalities

NCADD-NJ Treatment Locator
http://ncaddnj.org/treatmentProviders/default.asp

Department of Human Services Division of Addiction Services
http://samsdev.rutgers.edu/dastxdirectory/txdirmain.htm

Protection Under the LAD and ADA

Accommodation and Compliance Series: Employees with Drug Addiction, http://www.ncaddnj.org/pdf/EmployeesDrug.pdf

42 USC Ch. IV Sec 12210
http://www.ncaddnj.org/pdf/42USC.pdf

Protecting Your Clients Privacy Rights

Treatment Improvement Exchange Chapter,
http://www.ncaddnj.org/pdf/TreatmentImprove.pdf

The Confidentiality of Alcohol and Drug Abuse Patient Records Regulation and the HIPAA Privacy Rule
http://www.ncaddnj.org/pdf/HIPPA.pdf

Remedies

New Jersey Department of Law and Public Safety, Division on Civil Rights, http://www.state.nj.us/lps/dcr/filing.html

The U.S. Department of Housing and Urban Development,
http://www.ncaddnj.org/pdf/USDeptHousingUrbanDev.pdf

ENDNOTES

[1] According to a 2003 survey conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA)
[2] National Survey on Drug Use and Health (NSDUHs) 2002, 2003
[3] Eagleton Institute of Politics Center for Public Interest Polling, New Jerseyans' Opinions on alcohol and
Drug Addiction, Polling, conducted for NCADD-NJ, May 2002
[4] Ibid.
[5] Leshner, Alan, Addiction is a brain disease, University of Texas at Dallas, Issues in Science and Technology, 2006 http://www.issues.org/17.3/leshner.htm
[6] Gottleib, Elaine, The Science of Addiction, 2005, EBSCO http://healthgate.partners.org/browsing/browseContent.asp?fileName=14185.xml&title=The%20Science%20of%20Addiction
[7] Leshner, supra., Addiction as a Brain disease, 2006
[8] Ibid.
[9] Gottleib, Elaine, The Science of Addiction, 2005, EBSCO
[10] Pathways of Addiction: Opportunities in Drug Abuse Research, p. 9; Kleber, H.D., et. al. "Drug dependence, a chronic medical illness: Implications for treatment, insurance, and outcomes evaluation." Journal of the American Medical Association, p. 1689
[11] The Treatment Research Institute at the University of Pennsylvania, the National Rural Alcohol and Drug Abuse Network and the Alcohol and Drug Problems Association of North America
[12] Ibid, p. 1689
[13] New Jersey Judiciary, NJ Courts online, NJ Adult Drug Court Program, NJ Statistical Highlights, March 2007 http://www.judiciary.state.nj.us/drugcourt/nj_stats.htm
[13] Ibid.
[14] NJS 2C:35-14
[15]ASAMPPC-2R for the Treatment of Substance Related Disorders Risk Rating in Six
http://www.stpetershealthcare.org/documents%5Caddiction%5CSPBHM_ASAM_Criteria.pdf
[16] HSTAT SAMHSA/CSAT Treatment Improvement Protocols, Tip 43 http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat5.chapter.82676
[17] Ibid.
[18] NIDA (National Institute on Drug Abuse), NIAAA (National Institute on Alcohol Abuse and Alcoholism), SAMHSA (Substance Abuse and Mental Health Services Administration)
[19] Blenko, Steven, Economic Benefits of Drug treatment February 2005 http://www.cabhp.asu.edu/Research/Papers/PDF/Economic%20Benefits%20of%20Drug%20Tx.pdf
[20] McLellan, A.T. et al., JAMA, Vol 284(13), October 4, 2000; http://jama.ama-assn.org/cgi/content/abstract/284/13/1689

[21] National Summit on Recovery process sponsored by SAMHSA's CSAT

[22] Faces and Voices of Recovery, Public Opinion Polling, Talking About Recovery
[23] NJSA 10:5-1 et seq
[24] NJSA 10:5-5(q)
[25] Clowes v. Terminex Intern., Inc., 109 N.J. 575, 590-595, 538 A. 2d. 794 (1988)
[26] New Jersey courts have interpreted the LAD to incorporate Sections12210 of the ADA in determining when drug addiction is a disability. Bosshard v. Hackensak v. University Medical Center 345 N.J. Super 78, 783 A.2d 731 (App Div 2001); http://lawlibrary.rutgers.edu/decisions/appellate/a7077-99.opn.html
[27] Bossard 345 NJ Super 78; Matter of Cahill, 245 N.J.397, 585 A 2d 977 (APP Div 1991); Fowler v. Borough of Westville, 97 F Supp. 2d 602, 609-10 (2000)
[28] 42 USC Ch. IV Sec 12210 http://assembler.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00012210----000-.html
[29] Ibid.
[30] In re Cahill, 245 NJ Super. 397,401 (App Div. 1991), In the Matter of Jackson, 294 N.J. Super. 233 (1996) http://lawlibrary.rutgers.edu/courts/appellate/a6927-94.opn.html
[31] See e.g. Brian Whittle v. City of East Orange (1999); Fowler v. Borough of Westville, 97 F. Supp.2d 602 (D.N.J 2000).
[32] Batiste, Linda Accommodation and Compliance Series: Employees with Drug Addiction, EEOC 1992
[33] 42 CFR part 2
[34] The Confidentiality of Alcohol and Drug Abuse Patient Records Regulation and HIPAA Privacy Rule: Implications for Alcohol and Substance Abuse Programs, 2004; http://www.hipaa.samhsa.gov/download2/SAMHSA'sPart2-HIPAAComparisonClearedWordVersion.doc
[35] Protected health information (PHI) includes information that relates to preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, of the past, present, or future physical or mental health or condition of an individual. Some drug and alcohol test results, such as the results of pre-employment tests, arguably fail to meet this definition, as they are not designed to detect any medical condition. http://www.drugfreenj.org/Drugs_Dont_Work/Quarterly_Updates/Updates/Spring%202003.htm
[36] 42 CFR §§ 2.31, 2.33.
[37]42 CFR §§ 2.63–2.67ADA Technical Assistance Manual Title I of the ADA Sect VIII http://www.jan.wvu.edu/links/ADAtam1.html#VIII
[38] The Court must then find that there is "good cause" for the disclosure, in other words the court merely has to find that the public interest and the need for disclosure outweigh any adverse effect that the disclosure may have on the patient, the doctor-patient relationship, or the effectiveness of the program's treatment services, a standard that is easily met. Where the information sought is a "confidential communication," the court needs to find that the disclosure is necessary to protect against a threat to life or of serious bodily injury, is necessary to investigate or prosecute an extremely serious crime, or is connected with a proceeding in which the patient has already presented evidence concerning the confidential communication.
[39]42 CFR § 2.51
[40] Confidentiality of Patient Records for Alcohol and Other Drug Treatment, Consent, Court Orders; http://www.treatment.org/TAPS/TAP13/tap13chap

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