

## Motivational Interventions: How to Help a Colleague Struggling with a Substance Use or Mental Health Disorder

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## We Are a Self-Regulating Profession

As a self-regulating profession, it is important we familiarize ourselves with the Code of Judicial Conduct and the Rules of Professional Conduct. Observing a pattern of non-compliance provides an early warning system to identify and assist the judge or lawyer in distress; he or she may be suffering from a treatable illness; e.g., a substance use and/or alcohol use disorder, depression, post-traumatic stress disorder, anxiety, etc. A timely call to LCL or JCJ may allow us to assist the judge or lawyer before he or she engages in misconduct, which harms both society and the reputation of the Bench and Bar.

A judge's duty to report professional misconduct is established by Canon 2, Rule 2.14 of the Code of Judicial Conduct:

Comment (2) of Rule 2.14 states that *"A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program."*

Comment:

(1) *"Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, **appropriate action may include** but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or **making a referral to an assistance program.***

(2) ***Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals.** Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body." **Emphasis added.***

A lawyer's duty to report professional misconduct is established by Rule 8.3 of the Rules of Professional Conduct. Rule 8.3 (c) provides an exception to the duty to report: ***"The Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program."*** Comment 7 explains: *"Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and to the public." **Emphasis added.***

While LCL cannot advise you on matters regarding reporting requirements, we can refer you to ethics professionals who can answer your reporting questions.

At times, the misconduct is so serious that the reporting requirements of the Code of Judicial Conduct [Canon 2, rule 2.14] or the Rules of Professional Conduct [Rule 8.3] are triggered. Even then, LCL can help. We can provide free, voluntary and confidential resources, information and ongoing support to the lawyer or judge in need. We can assist the judge or lawyer with finding treatment, surround them with recovering colleagues, and refer them to the PBA's Lawyers Assistance Committee (which is separate and apart from LCL) to determine if voluntarily entering into a sobriety or mental health monitoring agreement is appropriate. Participating in a monitoring program can establish a case for mitigation (not a defense) when properly presented before the appropriate disciplinary agency. It is important to note that ***LCL does not provide monitoring services, nor do we provide any identifying or personal information to any agency or individual. This allows LCL/JCJ to remain 100% confidential*** and provide valuable elective services to legal professionals and their family members without fear of repercussion or reporting.

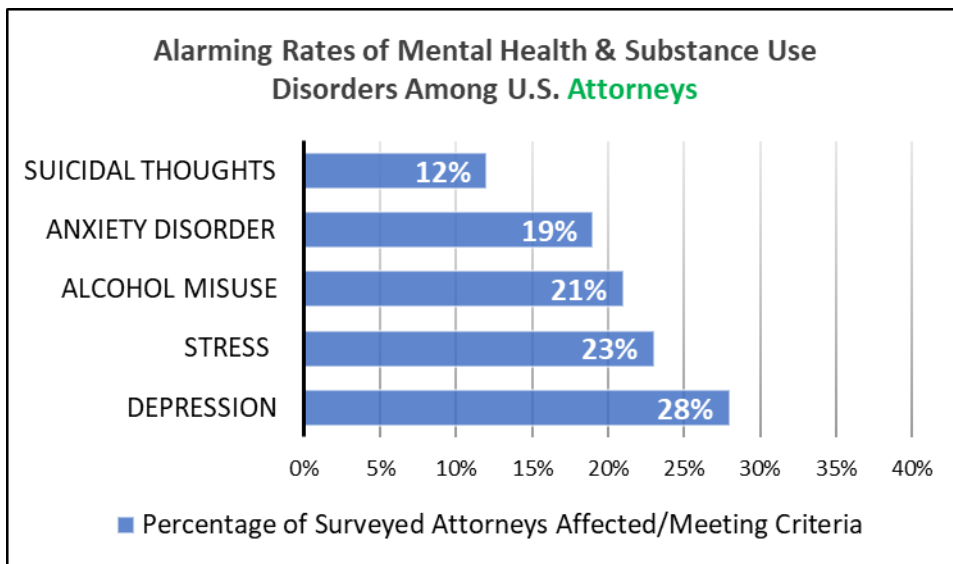
## **Prevalence of Substance Use and Mental Health Disorders in U.S. Lawyers & Law Students**

In 2016, there were approximately 70,000 attorneys registered to practice law in Pennsylvania. In any given year, approximately one third of licensees (>16,500) may be struggling with alcohol or drug use, gambling or other mental health conditions. This data is based upon a recent groundbreaking survey of nearly 13,000 actively practicing attorneys in the United States. It was conducted by the American Bar Association in conjunction with the Hazelden Betty Ford Foundation and utilized proven survey instruments to obtain reliable results<sup>1</sup>. It revealed the following staggering statistics:

- At least **21% of attorneys are struggling with problematic drinking** (hazardous and possibly dependent). This is the highest prevalence of any profession based on current data.
- **32% of lawyers under age 30 qualified as problem drinkers.**
- **28%** of lawyers meet the criteria for symptoms of **depression**.
- **19%** struggle with significant **anxiety**.
- **23%** have significant **stress**.
- Nearly **12% reported suicidal thoughts** during their career.
- Nearly 3% reported self-injurious behaviors.
- Only 37% of attorneys who needed mental health services actually sought out and/or received them.
- Only 7% of those who could benefit from substance use services actually received them.

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<sup>1</sup> Krill PR, Johnson R, Albert L. The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys. *J Addict Med*. 2016; 10(1):46-52.



Extrapolating this data, the following can be estimated:

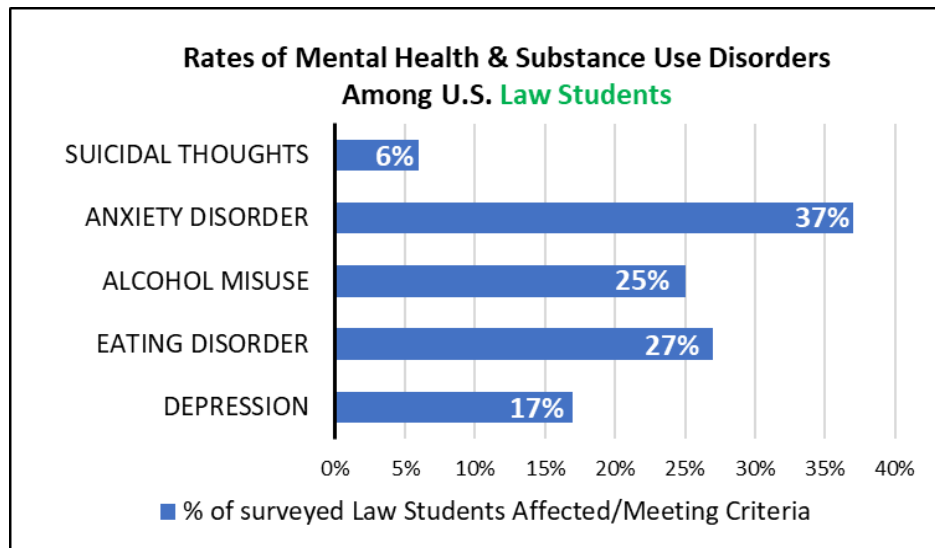
- **1 in 5 PA attorneys and judges may be using alcohol problematically.**
- **Up to 1 in 3 PA attorneys and judges may be facing depression.**
- **1 in 5 PA attorneys and judges may be struggling with significant anxiety.**

These remarkable results indicate that lawyers have significantly higher rates of problematic drinking and mental health problems than the general population, but they, more often than not, do not seek help; they often fear someone will ‘find out’, possibly harming their reputation or affecting their license. They are also used to solving other people’s problems, so they assume that they should be able to ‘fix’ themselves. The autonomy and self-reliance inherent to the practice of law, in concert with the nature of mental health and substance use issues themselves, often prevent these professionals from gaining insight into the severity of their challenges and/or from seeking professional help.

Younger, less experienced lawyers have higher levels of distress symptoms than their older, more experienced peers. A recent survey (2016) of law students nationwide also revealed similar patterns; law students exhibit higher levels of distress symptoms than the general population and limited help seeking behaviors after they matriculate.<sup>2</sup>

- **1 in 4 law students** consume alcohol problematically (i.e. may have an **alcohol use disorder**).
- Nearly **1 in 5 law students** grapple with symptoms of **depression**.
- **1 in 3 law students** may be dealing with an **anxiety disorder**.
- Up to **1 in 4 law students** struggle with an **eating disorder**.

<sup>2</sup> Organ, J. M., Jaffe, D. B., Esq., & Bender, K. M., PHD. (2016, Fall). Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns. *Journal of Legal Education*, 66(1), 116-156.



These statistics illustrate how important it is for law students to get the help they need as soon as possible to mitigate personal and professional consequences and have the best chance of launching their careers from a place of health and well-being.

### **Spotting the Colleague in Distress**

The surest way to identify a colleague in distress is to keep an eye on non-compliance with the Code of Judicial Conduct and the Rules of Professional Conduct. A pattern of non-compliance should be addressed immediately and is indicative that something is wrong. The causal factors for this non-compliance may include:

- lack of knowledge
- lack of skills
- lack of concern and care
- illness or disability

This paper's focus is on the judge, lawyer or law student who may have a substance use disorder (i.e., alcohol, prescription drug or illicit drug misuse), a gambling problem or other compulsive behavior, or a mental health disorder or issue such as severe stress, depression, anxiety, grief, trauma, etc. These are treatable illnesses with a good prognosis for recovery.

Before we go proceed, there are three very important points to always keep in mind.

- (1) *Do not diagnose anyone.* We are not trained, skilled clinicians nor are our personal observations sufficient to make an assessment, which is the prerequisite to determining

the appropriate level of care (treatment). Symptoms of severe stress, trauma, bereavement, mental illness and substance use often overlap.

- (2) Document specific instances of misconduct of which you have first-hand knowledge. As a general rule, focus on the individual's performance and not on the perceived cause of his or her performance problems.
- (3) Lawyers Concerned for Lawyers and Judges Concerned for Judges of Pennsylvania (LCL & JCJ) can provide invaluable information and guidance on how to help someone in distress. **All contact and communication with LCL and JCJ is 100% confidential. Your call does not trigger any reporting requirements nor does it obligate you to take any further action. There is no downside to calling LCL.**

There are numerous indicators that a judge or lawyer is in distress besides first-hand observation of drinking, drug use, gambling, etc. These include observation of personal and professional attributes that represent declining functionality and professionalism. Not everyone will display the same warning signs or display them all of the time. Depending upon the illness (or illnesses) involved, an individual may have periods of time when he or she appears "OK" only to later slip back into dysfunctional behavior. When a pattern emerges, we can safely assume that something is wrong which, if not addressed, may lead to (or allow the continuation of) ethics violations and malpractice. Please note that sometimes the individual may be "OK" but is struggling to cope with a loved one who is suffering from an illness or disability. This is another good reason to avoid labeling anyone as "addicted" or "depressed."

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## Warning Signs of a Colleague in Distress

Attendance	Performance	Behavior / Appearance	Personal	Trust Account	Miscellaneous
Late to meetings, conferences, hearings or other court functions	Routinely requests continuances or rescheduling	Complaints from clients, lawyers, etc.	Relationship problems	Checks not deposited	Non-responsive to a judge's requests or orders
Last-minute cancellations	Misses deadlines	Problems with court personnel	Legal separation or divorce	Incomplete or irregular records	Non-responsive to a disciplinary agency's inquiry
Failure to appear	Fails to follow local court rules, policies and procedures	Difficulty working with colleagues	Credit problems, judgments, tax liens, bankruptcies	Missing or altered bank statements	Noncompliance with CLE requirements
Taking "long lunches" or not returning after lunch	Decreased performance after long lunches	Avoidance of others (isolating)	Frequent illnesses or accidents	"Borrowing" from trust	Failure to renew law license
Unable to be located	Inadequate follow-through with assigned duties or tasks	Irritable, impatient; angry outbursts Rapid mood swings	Arrests or warnings	Failure to timely disburse client's funds or other payments	Lapsed insurance policies
Ill with vague ailments	Disorganized Lack of attention to details	Inconsistency or discrepancy in describing events	Isolating from friends, family & social events	Incomplete accounting for receipts and disbursements	Failure to file tax returns
Improbable excuses for absences	Poor judgment	Hostile attitude		Debit card withdrawals	Failure to pay taxes
Frequent restroom breaks	Difficulty remembering details or directions	Overreacts to criticism			
	General difficulty with recall	Unpredictable, rapid mood swings			
	Blaming or making excuses for poor performance	Excessive weight gain or loss			
	Decreased efficiency	Poor hygiene, disheveled or unkempt appearance			
	Unprepared or poorly prepared	Appears exhausted			

## **An Introduction to Lawyers Concerned for Lawyers of Pennsylvania, Inc.**

Lawyers Concerned for Lawyers of Pennsylvania, Inc. (LCL) is an independent, not-for-profit corporation whose mission is to provide confidential assistance to judges and lawyers, members of their families, and law students who are showing signs of stress, anxiety, depression, grief, prescription or illicit drug misuse, problematic alcohol use, problem gambling or other varied emotional and mental health problems. LCL knows how to help a judge or lawyer in distress or crisis. We have recovering attorneys and trained resource coordinators on staff. We access both a statewide and a national network of volunteers: recovering judges, attorneys and law students who know first-hand the fear and stigma attached to these illnesses. Fear, stigma, and the chemical and structural brain changes that occur in many of these illnesses often prevent people from asking for help. Our volunteers and staff are willing to share their personal stories. They can often help judges, lawyers, their family members, and law students overcome their fears, experience some clarity and accept the help they so desperately need when others cannot.

The nature of these illnesses, the stigma attached to them and the tendency of attorneys to retain control and responsibility to solve any problem (especially their own) works against the impaired attorney. Similarly, the intrinsic authority of being a judge interferes with his or her ability to recognize the need for outside assistance. Judges and lawyers with substance use disorders and/or mental health concerns often minimize or altogether deny their illness. Substance use and mental health disorders exist on a spectrum, from mild to moderate to severe. Intervention and treatment strategies are determined, in large part, by the severity of the issue. Severe substance use disorders, commonly referred to as ‘addiction’, are chronic, progressive and fatal if left untreated. Judges and lawyers facing significant mental health challenges (some of whom may also suffer from a substance use disorder) operate with a cognitive distortion that continuously tells them they are unworthy of being helped, they are beyond help, no one can possibly understand how they feel, and no one is to be trusted. These states of denial, ambivalence and distorted thinking often prevent the individual from seeking help. As the illness worsens over time, the personal and professional functioning of the judge or attorney dramatically declines. The struggling individual tends to isolate and may eventually disappear entirely from sight.

LCL and JCJ exist to assist judges, attorneys and law students in distress, but we can only help if you call us. Furthermore, the sooner you call, the sooner we can put a halt to the harm being done and the better the likelihood of a successful outcome. If you begin to notice changes for the worse in someone’s appearance, hygiene, moods, ability to concentrate, judgment, memory, comprehension, professional skills, personal behavior and attitude, call the LCL or JCJ confidential helplines – even if you do not have specific evidence of a mental health or substance use disorder. We will begin a confidential conversation with you to help you to better understand the nature of the illness that may be affecting the individual and determine what can be done (i.e., that which is both appropriate to their condition and acceptable to you. **Even if you cannot or will not be directly involved, call LCL/JCJ and discuss your concerns. 1-888-999-1941**



## **Making the Initial Call to Assist a Troubled Colleague – Your Call is Confidential.**

### *Once I call, am I obligated?*

Simply calling LCL or JCJ does not obligate you to be further involved. We answer your questions and explain our services. We offer literature, peer support, and assistance with planning an optimal approach of the individual whom you are concerned about. Even if you are unable or unwilling to participate in the approach, please share your concerns with LCL's trained staff; we can often find a way to gently approach the individual without your direct involvement and without compromising your anonymity. If appropriate, we can also provide a referral to a professional interventionist. You have the right to decline any or all of our assistance (and the right to call us back later to resume the discussion), and you may remain anonymous, if you so choose.

### *Is this any of my business?*

The bottom line is that an individual's life may be at risk (not to mention his or her health, family and career). We have a moral obligation to help the individual and a professional responsibility to protect the profession and the public from harm caused by impaired judges and lawyers. It is your business. Err on the side of caution and call LCL.

### *Will my call to the LCL harm the reputation of the judge or lawyer?*

Their reputation is already in jeopardy. If action is not taken to address the current or impending impairment, sooner or later, there will be professional misconduct, and members of the public will be injured. The reputation of the impaired judge or lawyer as well as the local Bench and Bar will be harmed. Your call to the LCL can prevent or mitigate the damage.

### *Will I get the judge or lawyer in trouble? Must I report him or her to discipline?*

Your call to LCL will not get the judge or attorney in trouble; ***we do not report any identifiable information to any court, disciplinary agency, state or local bar committee, the Supreme Court or any agency of the Court. LCL and JCJ services are 100% confidential.***

The lawyers' Rules of Professional Conduct and the Judicial Code of Conduct clearly encourage referrals to a lawyers/judges assistance program. LCL/JCJ are the Commonwealth's approved lawyers and judges assistance programs. LCL cannot advise you on whether or not to report; however, we know ethics experts who can address your concerns regarding your duty to report misconduct. Refer to our websites ([www.lclpa.org](http://www.lclpa.org) or [www.jcipa.org](http://www.jcipa.org)) or pg. 2 of this document for more information on this topic.

### *I am unsure what to do. I am uncomfortable being involved. Should I still call LCL?*

Our staff and volunteers (and, if necessary, a professional interventionist) are available to answer your questions and assist you throughout the whole process. Remember, trust and confidentiality are the

keys to opening the door of willingness to acknowledge that a problem exists and then to accept the offer of help. A respected colleague can more readily establish the requisite trust than a well-intended LCL volunteer or staff member who is a stranger. Nevertheless, LCL has successfully reached out directly to individuals in distress when no one else was available. Call and discuss your concerns in confidence, then decide if you can be further involved.

### *What will happen during the meeting / approach / intervention? What is expected of me?*

Either LCL/JCJ executive staff or an experienced interventionist can advise you on how to approach someone in distress. The exact nature of the approach depends upon several factors including:

- who will be involved;
- the perceived risk of harm to self and others (physical, emotional and legal);
- the nature and severity of the presenting problem; and
- the perceived receptivity of the distressed judge or lawyer to the approach.

If you concerned about someone, but do not wish to be involved, call LCL anyway. We can discuss options that will keep your identity confidential.

A structured intervention facilitated by a professional interventionist is often used to address late-stage addiction. This type of approach is commonly known as the Minnesota Model or the Johnson Model intervention. This may be your best course of action if previous approaches have failed, or the denial is strong. They often utilize a “surprise” meeting and employ leverage. Because these types of interventions are confrontational and, more often than not, poorly received by professionals, they are inappropriate when trying to help an individual who is not severely impaired or who may be depressed or suffering from another mental health challenge. There are, however, other intervention models which are invitational and educational in nature (e.g., ARISE, Family System models, Motivational Interviewing); thereby, reducing the potential for a counter-productive intervention. LCL staff can help you determine the optimal method of approach.

### *I tried talking to the individual about my concerns before and it did not work. Why bother?*

Call LCL or JCJ anyway. We need to know two things - (1) what happened: who was present, who said what and how was it said, how did the judge, attorney, family member or law student respond, and how did the meeting end; and (2) what has happened since: what changes have occurred in the person’s life – marital status, health, employment and financial situation, arrests or warnings, any other signs of mounting problems? From this information, we can (a) determine if it is appropriate for you or someone else to re-approach the individual and (b) discuss how best to do so. There may come a time when you have done all you can - allow LCL to help you to make that determination. Until then, it is always worth another effort to save the person’s life. One never knows when the individual will be receptive to another offer for help – *and if the offer is not made, we may never know if they were ready and just needed one more chance.*

### *Will the individual become angry with me?*

Express genuine concern – let them see that you are *not* critical, accusing, demeaning, shaming, condemning, judgmental, or threatening. Do not label the person as ‘depressed’ or ‘alcoholic’, and do not tell the person what he or she must do. Language matters. Avoid terms like ‘addict’, ‘drunk’, ‘drug user’ and ‘junkie’, and do not suggest that the person can just ‘snap out of it’ or that it only takes discipline and willpower to get well. These terms and phrases carry significant stigma and shame and will often cause the individual to shut down or become defensive. People with significant substance use or mental health disorders cannot simply get better on willpower alone. If authentic concerns are presented correctly, the risk of anger, resentment and defiance is minimized. You will have planted a seed that may later germinate into willingness, and the party may one day reach out for help.

### *What the individual is very intoxicated, very depressed, manic or erratic?*

If risk of harm to self or others is imminent, call the local crisis center or police. Do not place yourself or others in harm’s way. In those situations where the threat of imminent harm is not present, consult LCL, a crisis resource center or healthcare professional prior to making an approach. Sometimes, taking the individual to the nearest hospital emergency room is the safest course of conduct. In these situations, it is recommended that you find someone to accompany you – provided, however, they understand the situation and will be supportive and caring and have no prior history of conflict with the individual in crisis.

### *The individual seems to be doing better. Perhaps I am being too hasty. Should I wait and see?*

Symptoms of mental health and substance use disorders often wax and wane. The individual may temporarily look better, feel better and function better. And, in fact, maybe they are doing better. However, if the individual is suffering from an addiction (i.e. severe substance use or behavioral disorder) or a mental illness, the symptoms will return with a vengeance eventually. Over time, a pattern will emerge. You may even begin to recognize what events will precede a return of the symptoms (i.e. triggers), such as pre-trial stress, post-trial relief, other work related deadlines, holidays, family events, sporting events, etc. The judge or attorney struggling with an untreated substance use or mental health disorder is on an emotional and behavioral roller coaster that will eventually run off the rails, so, the earlier these illnesses are addressed, the better.

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## **Pennsylvania's Motivational Intervention Model**

*The following briefly describes LCL's intervention protocol. This is not meant to be a "do it yourself" guide. Always seek professional guidance before attempting an intervention. A botched intervention can cause irreparable harm to all involved. Please call LCL for assistance.*

### **Overview**

You call the confidential helpline expressing concern about a judge, attorney, a family member or a law student. You want to help but you are unsure about what to do. You hesitate getting involved for many reasons. The underlying problem is unclear. It could be stress, anxiety, a substance use disorder, grief, depression, an eating disorder, etc., or any combination thereof. LCL staff will listen to your concerns and answer your questions. We will educate you about the nature of the possible illness(es) involved. Finally, we will assist you in determining the best strategy for reaching out to the person in distress. We may recommend consulting a professional interventionist. Shortly after your call, we will offer to send relevant literature to you to complete the initial education process. If appropriate, we may suggest that you speak to one of our recovering volunteers. Of course, you are under no obligation to accept any of our services. ***We will provide assistance even if you do not wish to be further involved and even if you wish to remain anonymous.***

We recognize that direct confrontation generates resistance in most people, outright defiance in some, and stress and fear in most. Therefore, we first consider using an indirect, approach tailored to the situation at hand. The approach is conversational and collaborative in nature and is designed to spark self-awareness and an intrinsic desire to change. This sets the stage for a long-term alliance between the struggling party, you, and LCL staff and volunteers. A direct, confrontational approach is generally counter-productive, especially in professionals. Criticizing, blaming, threatening or labeling the person as alcoholic or depressed can provoke anger and shame and magnify the individual's feelings of helplessness, hopelessness, unworthiness and loneliness. These approaches will likely instigate more isolation and defensiveness, causing the person to shut down and shut out those who are concerned. Our primary goal is to gently awaken the individual to the reality of their situation.

We start with the least intrusive approach appropriate to the individual's needs and then move towards more direct action (if and when appropriate). From the outset, we seek to establish a relationship based upon the person's belief that we have only their best interest at heart. It is a foundation built upon compassion and trust, not threats or coercion. Our hope is to elicit from the distressed person an acknowledgment that something is going on and an agreement to accept help. If the individual accepts our help, they are offered a free evaluation by a qualified healthcare provider who will diagnose the underlying problem and develop a treatment plan tailored to meet their individual needs.

Our strategy involves **three types of approaches**, which represent a continuum of increasingly more direct action:

1. A private meeting
2. A group meeting without the application of leverage
3. A group meeting with the application of leverage

Choosing the most appropriate approach takes into consideration several questions:

- ✓ What are the warning signs? Who has first-hand knowledge?
- ✓ How likely will someone be harmed (self and others, including clients)?
- ✓ Is the individual experiencing relationship, health, marital, financial or legal problems?
- ✓ Are they showing the warning signs of professional impairment?
- ✓ Are clients or coworkers complaining?
- ✓ Have malpractice suits or disciplinary complaints been filed?
- ✓ How receptive do you believe the lawyer or judge will be if approached?
- ✓ Have there been any prior approaches? If so, what took place and what happened?
- ✓ Can you / should you be involved with the approach? Are you willing to be involved?
- ✓ Who else has expressed concern? Should he or she participate in an approach?
- ✓ Does anyone have any leverage which can be applied if all else fails?

## 1. A Private Meeting

*How do you help an individual who appears stressed out or despondent or is drinking more than before but shows no obvious signs of major depression or addiction, nor has a known history of treatment? To the best of your knowledge, they are still functioning competently, but something is clearly awry.*

You think others may be concerned as well, but no one is openly discussing their observations. No one is entirely sure what is causing the person's distress because there is only minimal information - mostly suppositions and hearsay with little or no meaningful evidence. Each concerned party may hold a clue, but no one has the big picture regarding the underlying problem. You hesitate asking others for fear of starting rumors. What can you do?

In these types of cases, where *the perceived risk of harm to self or others appears low*, our experience suggests that you may be more comfortable and more effective using a low key, non-confrontational, first approach. We suggest a private meeting with only you or perhaps a second person (who must be perceived as discreet and supportive).

The format is conversational and supportive – you are meeting to express your concern rather than to confront. Your tone of voice and your body language should convey empathy. You want the individual to confide in you and express a willingness to accept help with whatever is troubling them. Your success hinges largely upon your ability to gain the individual's trust. What you say is also important.

The means and 'script' of the approach are influenced by how well you know the person and how you think your message will be received.

*Ease into the conversation* and at some point recall a personal or professional story which illustrates their good qualities, professional skills, accomplishments, etc. and your friendship or respect. The goal is to build the individual's trust in you. Once you sense they do not feel threatened by you, inquire generally as to how they are doing. It is important to ask open-ended questions. Using too many "Yes" or "No" questions is unlikely to illicit engagement. If the person has previously disclosed to you a problem with sleeping or stress or feeling overwhelmed, ask how they are doing with that particular problem. If they ask why you are inquiring, gently tell them your concerns. Disclose just enough first-hand knowledge to support your concern. Avoid both a long list of his problems or mistakes and any information gained second-hand. Do not label them or guess at a diagnosis. Remember that language matters. Avoid words like "addict", "alcoholic" etc.

If they open up, allow them to talk. Do not interrupt. When an opening appears, restate what they have said. This is called 'mirroring'. This technique allows the person to hear their own words and pick-up on any inconsistencies (e.g., "I'm fine....I just haven't slept in 2 days"). Sometimes this is enough for them to realize something is not right. It also validates that you are listening. *If appropriate*, share a similar personal experience to help them sense that you understand what they are going through and what they may be worried about. Share what you did to overcome the problem or what you would do now if the problem ever returned. Relay that you want to see them feeling better and happy and that you believe they can feel better if they receive the right kind of help and support. Express your own willingness to help.

*If the judge or attorney expresses interest in your offer to help*, point out that LCL and JCJ are safe, confidential, free, non-judgmental, and effective resources for assistance. If you have received our help for a personal problem in the past, and you feel comfortable doing so, you may share your own experience. Provide our Helpline number (1-888-999-1941). If you sense that they are merely being polite and have no intention of calling or that they are incapable of calling, offer to make the call together, while you are still with them. Emphasize that the call is confidential and they can remain anonymous. If they balk, drop it for now. Do not push. Patience and persistence pay off in the end.

*If they do not acknowledge having any problems or you sense resistance*, do not blurt out a long list of their missteps and mishaps. Keep the conversation cordial and (unless you sense they need immediate assistance) put off a detailed explanation of your concerns until another time. Do not argue. Do not try to change their mind. Do not apply pressure or issue warnings or threats. Remember, under this scenario, they are showing only signs of distress, not professional impairment. If they acknowledge that something is wrong but think they can handle it alone - do not argue. Ask them what their plan is. If they do not have a plan, ask if they want to discuss options to improve their situation. If they do not want to talk about it, drop it. If they have a plan, do not criticize it. Tell them you hope they succeed and things improve. Offer your support but do not be pushy. If receptive, ask the individual if they will accept your help should their plan prove unsuccessful.

*Conclude the meeting with a friendly reminder that you are available if they feel the need to talk or confide in someone. They may, in fact, just be going through a rough patch. State that you want to stay in touch and ask permission to do so. This keeps the door open for you to observe any changes for the better or worse and, if necessary, to make a second approach.*

*A seed has been planted. Allow the individual time to think about what you have said. If you came across as genuinely interested in his well-being, they may reach out to you for help in the future, or they may be more receptive to your next approach. Please keep us (LCL) advised of any new developments or signs of deterioration.*

## **2. A Group Meeting Without the Application of Leverage**

*If it is clear that a serious problem exists that will lead to substantial misconduct or other harm and one or two private meetings have not produced results (i.e., no acknowledgment that a problem exists or an outright refusal to seek help) OR if we start with a situation where the level of impairment is higher but there is no proof that anyone is in imminent risk of being harmed and it is believed that the judge or attorney will not be receptive to a private approach, this approach may be optimal.*

You may wish to involve others willing to meet with the individual in a group setting for the sole purpose of expressing concern *without the use of leverage or ultimatums*.

LCL staff and/or an independent interventionist will assist you with preparing and, if needed, facilitation of the meeting.

The group must be carefully selected, screened and qualified, and trained to ensure each member (a) has a supportive (not critical or blaming) attitude; (b) has prepared a written statement which is supportive and empathetic; and (c) is able to identify an opening which can be used to help the judge or lawyer see the reality of the situation and become willing to accept help. Careful consideration and planning goes into every step of the meeting - everything from who sits where to the order of presentations. Select a team leader to run the meeting if conducted without a professional interventionist.

Our first goal is to create a safe environment. Begin the meeting with a brief statement of concern and support. Say you want this to be a conversation. Ask if the individual will allow the group to express their concerns without interruption and, when finished, the individual will have their turn to speak (and you will listen). Each member of the group takes their turn to share some stories to establish a baseline of the judge's or the attorney's positive qualities and accomplishments. Follow it with a few examples of how you have observed changes in them that concern you.<sup>3</sup> The purpose is to help the person see discrepancies between their former self and who they have become. They may be minimizing their problems or may be altogether blind to them. Talk about how you want to see them

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<sup>3</sup> Caution: Reciting a long list of personal and professional failings or labeling him as having a drinking problem or being depressed will come across as critical and faultfinding. The individual may shut down, resist or retaliate. Convey just enough information in a non-judgmental, non-accusatory manner, which will minimize a defensive reaction or feelings of being overwhelmed and hopeless but will nevertheless plant the seed of discrepancy.



happy again. State your willingness to help. If you are willing, share a personal experience that will convey a sense of hope for the future.

Throughout the meeting, you should pay attention to the person's body language and facial reactions to sense when to back off, allow them to calm down, and then resume. A defensive or defiant reaction will interfere with their ability to listen, understand and accept what you are saying. Your goal is to create a safe and supportive environment in which the distressed judge or lawyer listens and, ideally, feels comfortable with opening up about what is troubling them – even if it is simply “I feel stressed out” or “I don’t know what’s wrong.” *Whatever they disclose, use it as a starting point to acknowledge their distress.* Ask what you can do to help. Encourage them to receive an assessment by a qualified healthcare provider to correctly identify the underlying problem and find a solution. (See the last paragraph of this section.)

*If the judge or attorney does not open up and instead says, “It isn’t that bad” or “I can handle this on my own,”* do not interrupt and do not argue. When they are finished speaking, simply say you are concerned for their well-being and that you just want to see them feeling better. *Ask them if they have a plan* to address what they identify as their primary challenge. If they do not have a plan, ask if they are willing to discuss what they can do to improve their situation. If they refuse, ask why they think things will change for the better. They probably lack a reasonable answer. If they do not want to talk about it, drop it. If they have a plan, ask what it is. Do not criticize it. Tell them that you want their plan to succeed. Whether they have a plan or not, *ask if they will allow you to help if signs of distress or professional impairment continue or worsen.* If they agree, you now have permission to re-intervene if their condition worsens. If they balk, diplomatically remind them that you and the others have professional responsibilities, which leave you no choice but to address any future misconduct. This is a sensitive situation in that you are putting them “on notice,” yet trying to do so in a way that minimizes a negative reaction. This sets the stage for applying leverage at the next meeting if they fail to show noticeable, acceptable improvement.

*Do not argue* with the judge or attorney, to avoid triggering defensiveness and the closed mind that will follow. If you have come across as sincerely concerned, yet neither critical nor judgmental, they are more likely to listen and comprehend what you are saying. They may reflect upon what you have said and, if their ‘problem’ worsens, may realize they need help. It is human nature to minimize our problems, spend a lot of time contemplating the need to change, and to go back and forth about what to do before we decide we must change our behavior. We call this natural response ambivalence. Give the individual some time to think about what they have heard. You may get a call from them when you least expect it.

*If the individual shows interest or agrees to seek help,* express your confidence in LCL as a safe, effective and confidential group who can help them. Explain how we are 100% confidential and specialize in helping attorneys, judges, their family members, and law students. We will discretely arrange a private and confidential consultation with a healthcare professional, if indicated<sup>4</sup>, and can

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<sup>4</sup> LCL pays for the initial consultation/evaluation, if it is arranged through our helpline.



arrange contact with another peer who has been through a similar experience and successfully overcome the challenge. We can also provide information and literature relevant to the challenge(s) the person may be facing. Encourage them to call us immediately before they change their mind about seeking help. Let them know that all of our services are free and voluntary and that they can engage or disengage any or all of our services at any time. Emphasize, again, that you wish to see them feeling better and there is no point in delaying a call to us. “Why wait?” Offer to call us right then and there. This method has proven very successful over time. If they balk, however, back off. Give them our number (1-888-999-1941) and website [www.lclpa.org](http://www.lclpa.org), and do not push.

Many times the individual needs to feel that they are in control and therefore will insist on scheduling their own evaluation. In all cases, obtain a firm commitment and ‘timeline’ for setting the evaluation. Explain that you want to be sure they are evaluated by a qualified professional who has been vetted by LCL. Emphasize the evaluation is confidential and free of charge. You may want to give them two or more names of providers, provided to you ahead of time by LCL staff. This gives them some control over their choice of provider, while ensuring that a qualified evaluator can see them immediately.<sup>5</sup>

### **3. A Group Meeting Using the Application of Leverage**

*When we are dealing with a judge or an attorney who is clearly unreceptive and their conduct is causing harm to self and others, they must be made aware and held accountable without further delay.*

The individual, due to the nature of the biochemical and structural changes in the brain combined with natural ego defenses, may be in denial. More than likely, they have already been confronted about their conduct. If they have not been approached before, we may recommend that you approach them privately and express your concern. This forestalls an angry challenge to your sincerity because you did not previously mention anything to them about your concerns. If they deny any problem or refuse to cooperate with seeking an evaluation, you can proceed, without delay, to the group meeting with the application of leverage.

No one is well served by a clearly impaired judge or attorney. In this example, we describe an individual who is not receptive to receiving the message that their current behaviors (related to substance use and/or mental health issues) have become problematic to the firm, the clients, and/or the bar as a whole. They may be blind to the problem, resigned to the situation, or aware that something is wrong but is feeling ambivalent about making a change; they are unsure about what to do and worried about the consequences of disclosure. Delay is risky. *This is a clear case for intervening with the appropriate use of leverage, should it be needed, to help the individual understand the reality and consequences of their continued behaviors.*

By this time, you and the other concerned parties may be frustrated, worried and angry. Do not allow these emotions to get in the way of trying to help the individual. Call us and begin a discussion about possible approaches and next steps. If appropriate, we will refer you to a qualified, experienced

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<sup>5</sup> An unqualified or inexperienced evaluator can be manipulated by a talented judge or attorney. This results in misdiagnosis and ineffective treatment recommendations. LCL-vetted providers are specially qualified to help this population.

interventionist to guide planning and preparation. If helpful, an LCL volunteer may be added to the team. Keep an open and ongoing line of communication with us. By keeping us informed, we can continue to assist and provide support to both you and the party you are concerned about.

The fundamentals of conducting a group meeting were covered in the previous section; there are, however, some differences in this scenario. The meeting will generally start with a description of the person you have known and respected. You do your best to convince them that you are their friend and that everyone present has their best interest in mind. However, because their behaviors are causing harm that cannot be allowed to continue, you and the other members of the team *must be fully prepared to cite specific, concrete instances of inappropriate behavior and professional misconduct. The team should write out and rehearse what they are going to say and how they are going to say it* until everyone feels comfortable with their delivery. *Your tone of voice must be calm and reflect your sincerity* – do not come across as impatient, annoyed, accusatory or judgmental. Stick to the facts of which you have first-hand knowledge and which illustrate how their misconduct affected you, the court, and others. These facts may include a list of performance and behavioral problems as well as a list of objective indicators of a potential substance use or mental health problem. Do not berate them and do not label them as an alcoholic, addict, bipolar or crazy. Refrain from using these terms in all of your conversations, even those that do not directly include them. If appropriate and if you are willing, you may share your own personal experience in overcoming a similar problem. Close with a statement of your wish to see them feeling better and that you believe they will if they accept confidential assistance from LCL. Ask for permission to schedule an appointment on their behalf with an LCL-vetted healthcare provider. This confidential evaluation will provide an accurate assessment of what is going on and assist them in taking action to comprehensively address the challenge(s) they may be facing. Call LCL for assistance and to obtain names of several qualified providers that can see the individual immediately.

*If they refuse to acknowledge the need for help or reject your offer of help, you and the other team members must state your personal and professional boundaries.* Enabling must cease (i.e., protecting the judge or attorney from the consequences of their inappropriate behavior or professional misconduct). Leverage must be applied to “bring home” the consequences of not seeking help or refusing to change behaviors. They may become angry and resentful. Nevertheless, explain the conditions they must meet for you to refrain from reporting them to the Judicial Conduct or Disciplinary Board or for their continued employment with the firm. These *may* include:

- ✓ An objective and thorough evaluation/assessment by a healthcare professional (Call LCL for a list of qualified professionals. LCL will pay for the initial assessment.)
- ✓ Compliance with the healthcare professional’s recommended plan of treatment
- ✓ Issuance of a fitness for duty certificate by a healthcare professional before returning to work
- ✓ Temporary restrictions on duties and responsibilities
- ✓ Work supervision
- ✓ Random alcohol/drug testing per the employer’s policy, if applicable
- ✓ Mandatory self-disclosure of relapse

- ✓ The consequences for non-compliance or relapse (e.g., sanctions and/or additional conditions for continued employment)

The Pennsylvania Bar Association's Lawyer Assistance Committee (not LCL) can assist with the appointment of a sobriety or mental health monitor and drafting of a monitoring contract. (The Disciplinary Board enlists this committee to monitor lawyers who have been placed on probation as a result of misconduct involving substance use or serious mental health disorders. Attorneys may also request such monitoring pre-order or as per an employer's recommendation. LCL will provide the contact information for the PBA-LAC, but LCL does not perform such monitoring or reporting. This allows our services to remain 100% confidential.

This brief discussion highlights only a few of the key elements of a professionally conducted intervention. Other components include:

- ✓ Educating, qualifying and screening of team members
- ✓ Script writing, review and revision
- ✓ Rehearsal
- ✓ Addressing safety concerns if the evaluation or treatment admission is delayed
- ✓ Preparing a contingency plan if the judge or attorney refuses to cooperate, fails to follow through with either the evaluation or the recommended treatment, or if their symptoms recur
- ✓ Post-intervention debriefing of the team

Proper planning and preparation ensure the best outcomes. Hurried and ill-prepared interventions can backfire and ruin future chances to be of assistance.

*An alternative approach* is for the concerned parties to schedule a meeting with a professional interventionist / therapist to discuss your concerns and extend an invitation to the impaired judge or lawyer to attend. They might be curious and show up. In that situation, a professionally facilitated conversation can be held which may resolve the matter. If not, the group can proceed with planning a traditional intervention.

## **Stages of Change Model**

For an individual to make and sustain change, a new pattern of behavior must be built over time. The transtheoretical model of change can be applied to many behaviors and health concerns. It is a useful way of understanding the process of change, and gives structure to how changes in behaviors can be encouraged and managed. Motivational interventions are person-centered approaches and are informed by these stages of change.

### **(1) Pre-contemplation**

The individual is not considering behavioral change; they may be partially or completely unaware that a problem exists, that changes must occur, and that help is needed

to make lasting change; or the individual may be unwilling to change at all. Some may have tried to change and failed and are now too discouraged to try again. This stage is often marked by reluctance, rebellion, resistance and/or rationalization of behaviors.

(2) **Contemplation**

The individual is more aware of the consequences of their behavior and is beginning to perceive that there may be causes for concern and reasons to change. They may be considering the possibility of change by seeking relevant information, re-evaluating behavior, or seeking help to support the possibility of changing behavior. The individual is *ambivalent* — weighing the pros and cons of behavior modification — and doubts that the long-term benefits of change outweigh the short-term costs (e.g., abstinence, “loss” of social life, lifestyle changes, giving up drinking friends, etc.).

(3) **Preparation/Determination**

The individual perceives that the benefits of change and the adverse consequences of not changing outweigh the benefits of their current behavior. They made an initial commitment to change and are gathering information, strategies, and resources to understand what is involved to make the change. They engage in self-examination of their ability to change and may disclose, to others, the plans, goals, and commitment to change. They may attempt to affect change on their own with varying results. A poor result may discourage any future efforts (i.e., a return to the pre-contemplation stage).

(4) **Action: Implementing a Plan**

The individual chooses a strategy for change and begins to pursue it by modifying behavior and environment; making lifestyle changes; and re-evaluating self-image. They often establish accountability with another trusted person and engage in treatment or support of some kind.

(5) **Maintenance**

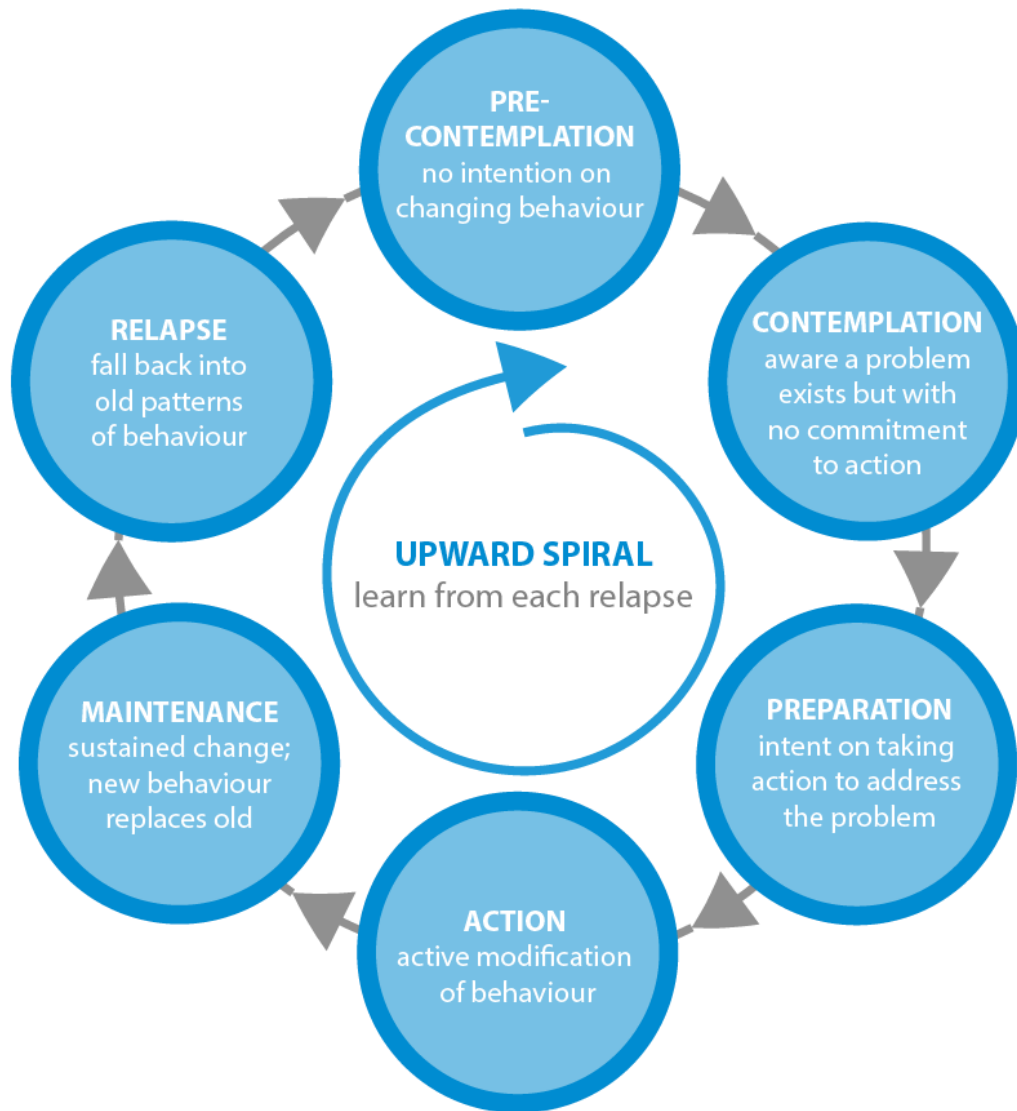
The individual continues the efforts to sustain the gains achieved in the action stage. Extra precautions may be necessary to keep from reverting to problematic behaviors. In other words, the individual must know what may trigger a relapse or recurrence of symptoms and plan appropriately to avoid or mitigate those triggers.

(6) **Recurrence of Symptoms (Relapse or Slip)**

This refers to the event that triggers the individual’s return to earlier stages of change; they begin cycling through the process again. However, this can be a learning opportunity if they discover that certain goals are unrealistic, certain strategies are ineffective, or certain environments are not conducive to successful change.

An individual does not move through the stages of change in a linear fashion; rather, they travel/cycle back and forth between stages.

## STAGES OF CHANGE



## **High Risk Situations**

Occasionally an individual is potentially violent and possibly armed. They may pose a real danger to self and/or others. Do not put yourself or others in harm's way. Contact your local crisis intervention service or 911. Your safety and the safety of others must be your first consideration.

### **Concerns Regarding Suicide**

At times, a judge, attorney, a family member, or a law student that is struggling with a mental health and/or substance use issue may reach a deep level of despair. They may have given up all hope and believe that suicide is the best solution. Some of the warning signs of an individual who may be contemplating suicide are:

- ✓ Repeated expressions of hopelessness, worthlessness, helplessness and despair
- ✓ Frequent references to death
- ✓ Increasing social isolation
- ✓ Substance misuse and engagement in other risk-taking behaviors that are out of character for the individual
- ✓ Mention of a 'plan' to carry it out and/or access to lethal means
- ✓ A history of suicidal behavior or attempts or a family history of suicide
- ✓ Sudden onset of behaviors that are 'out of character'
- ✓ Depressive mood followed by a sudden and unexpected change to an almost overly cheerful attitude
- ✓ Talking about "final wishes" in detail, preparing for death, etc.
- ✓ Unusual purchase of life insurance
- ✓ Giving away possessions and cherished items
- ✓ Quitting a job

If you are concerned that someone may be acutely suicidal, take immediate action by calling the local crisis center or 911.

- ✓ Talk directly to the person in person if possible.
- ✓ Encourage him to call or text the **National Suicide Prevention Hotline 1-800-273-TALK (8255)** or text the **Crisis Text Line** by texting **TALK** to **741741**). These resources are available 24/7.
- ✓ Find a safe place to meet the individual. Remain calm.
- ✓ Express your concern. Assure them of your respect for their privacy, but convey that you will take any action needed to keep them safe.
- ✓ Be sincere and kind. Encourage them to discuss recent events and feelings.
- ✓ Let the person talk. Give your full attention. Do not interrupt.
- ✓ Do not minimize what they are feeling. Do not say, "It's not as bad as you think," "Everything will be okay" or "Don't worry."
- ✓ Ask if they have a concrete "plan" or method to attempt suicide. Do they have access to weapons or other means of attempting suicide?
- ✓ Admit your concern and your fear for their safety.

- ✓ Ask if there is something you can do. Talk about available resources. Help the person to make a “safe plan” for the next few hours or days.
- ✓ Encourage the individual to engage a mental health professional for treatment and support immediately.
- ✓ Stay in frequent contact, listen and offer positive encouragement.
- ✓ Call the LCL or JCJ Helplines (1-888-999-1941 or 1-888-999-9706) to discuss your concerns and receive support for yourself and the individual.

## **The ‘State of Mind’ of the Legal Professional with a Substance Use and/or a Mental Health Disorder**

It is important to understand how addiction, depression, trauma, grief, and other mental health issues alter an individual’s perception of their world. They see themselves and others through a prism that distorts reality; a prism that is created by altered and dysregulated brain structure, function and communication that are both the cause and the result of these disorders. Either they do not see themselves as suffering from an illness, or they believe they still have control over their illness and their lives, even after it becomes very clear to those around them that they do not. The challenge we face is two-fold: first, we must help them to see and understand how their substance misuse and/or mental health disorder is harming themselves and others and, second, we must convince them to accept help.

Someone who has earned a law degree, been admitted to the Bar (or Bench) and has all the trappings of success may be hard pressed to admit that they are struggling with mental illness or is not in control of their behaviors and/or their use of alcohol or other drugs. What they fail to comprehend is that increasing alcohol/drug use or other compulsive behaviors is not merely indicative of a professional who ‘works hard’ and ‘plays hard’; rather, it can be an indicator of a progressive disorder that will eventually sabotage the person’s health, life and career. At some point, the judge or attorney may realize they have a problem with substances, behaviors, depression, anxiety, trauma, grief, etc. but prefers to handle it alone. They may worry that disclosure will harm their reputation and career. These fears stem from the stigma associated with mental health and substance use disorders. The individual may delay seeking treatment, thereby allowing the illness to worsen and making treatment and recovery more difficult. They may believe they can fix their own ‘problem’ just as they solve problems for clients day after day; after all, lawyers and judges are smart, educated, and a highly competent problem-solvers. They may blame their behaviors, depressive symptoms, anxiety, or substance use, etc. on others, claiming they, for example, drink or use prescription opioids or gamble *because of* their stressful job, their ‘high maintenance’ spouse, their demanding clients, etc. They believe they ‘deserve’ to drink, use, or engage in compulsive behaviors (e.g., shopping, sex, gambling, etc.) because they works so hard, or that they wouldn’t be depressed, etc. if their family would just ‘get off their back’.

Meanwhile, the individual’s judgment and professional skills begin to decline (i.e. impairment) and the likelihood of professional misconduct increases. They may recognize the need for professional help and secretly enter into a treatment center or seek out a therapist, but they tell no one else of their



struggles, do not engage in ongoing peer or group support, nor follow up with their physician or therapist, because they believe they are 'cured.' This often leads to 'relapse' or a recurrence of symptoms in both substance use and mental health disorders. They may then resign themselves to the prospect of being an 'alcoholic' or 'addict' or believe they can never overcome their depression, grief, anxiety, etc. Perhaps, they think, if they only had enough discipline or willpower, they could conquer these issues and get back to 'normal.' This person is not in denial of their addiction or mental illness; rather, they are lacking education on the nature and effective treatment of mental health and substance use disorders and are in denial of their ability to recover. Relapse or recurrence of symptoms is common, but it is not a sufficient reason to give up. Just like other chronic illnesses, recovery from substance use and mental health issues is rarely a 'straight-line' journey.

Some judges and attorneys, that are clearly struggling with a mental illness and/or a severe substance use disorder, deny outright that their use of alcohol or drugs is a problem or that they are struggling with a significant mental health challenge despite a history of health problems, injuries, failed relationships, legal separation or divorce, disciplinary complaints, financial problems, etc. (most of which are related to their substance use or mental health issues). These chronic medical illnesses are making their life unmanageable, but he cannot or will not see it. This begs the question, ***“Why don’t those who misuse prescription or other drugs or alcohol or those who are depressed, etc. see what is going on and what they are doing to themselves? Why can’t they just stop?” or “Why can’t they just snap out of it?”*** Those questions are indicative of a lack of understanding of the neurological underpinnings of addiction and mental health disorders. Aberrant neural pathways, structural and functional changes in the brain pre-exist and/or develop. Once they are established, they are difficult to deactivate and often prevent the individual from developing significant insight into their behaviors or problems. The individual with a substance use disorder must cease triggering these pathways and develop new pathways that bypass them in order to achieve and sustain recovery. Someone with a mental health disorder also requires the development of alternate or 'rewired' brain pathways and must balance dysregulated neurotransmitters to facilitate positive thinking and behaviors. This process occurs slowly over many months or even several years.

### **Why Do Some People Develop Mental Health and/or Substance Use Disorders?**

It is very important to remember that we are dealing with medical illnesses that have gradually altered the individual's way of thinking their behavior over a long period of time. Addiction to alcohol or other drugs, pathological gambling, depression, and other mental health disorders can result from a combination of genetic vulnerability, early life trauma, medical problems, and environmental & sociological circumstances, among many other risk factors (i.e., rather than 'nature vs. nurture', the reality is often 'nature *and* nurture.') People do not choose to develop a severe substance use or a mental health disorder. It is often a slow, insidious process that incrementally changes the structure and function of the brain until the person has little or no insight into the identification or seriousness of what is going on with them.



## Trauma & Environment (Nurture)

Multiple studies over many years have clearly demonstrated that growing up in an environment where there is physical, sexual or emotional abuse, neglect, and/or untreated substance use disorders or mental illness (referred to as Adverse Childhood Events or “ACE’s”) adversely affects the developing brain in a way that promotes a state of chronic stress and anxiety over a lifetime. Someone who has experienced some or all of these ACE’s may become more easily frustrated, develop anger issues, have poor coping skills, lack resiliency and may be at higher risk for impulsive reactions (rather than a reasoned response), when confronted with a perceived threat. These individuals are more likely to perceive events, interactions and situations as a real threat than those raised in a relatively ‘normal’ family environment. In response to this chronically stressed or hypervigilant state, people may turn to substances or other compulsive behaviors in an attempt to self-soothe, which can trigger a cascade of neurobiological and psychological changes that, in concert with genetic and environmental factors, may lead to the development of a severe substance use disorder or mental illness.

*[Please see the Center for Disease Control and Prevention’s website for more information regarding Adverse Childhood Events (ACE’s) and their effects across a lifespan:*

[https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/index.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Facestudy%2Findex.html](https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Facestudy%2Findex.html)

Trauma sustained in adulthood can also predispose one to substance use and mental health disorders. Trauma is not just limited to physical harm to oneself, but also includes any event or series of events that overpowers one’s ability to cope. For many people, trauma must be addressed and processed emotionally, physically, cognitively and spiritually to prevent and/or treat negative long-term impact. The definition of trauma is in the eye of the beholder. For many reasons out of our direct control, people experience trauma through different lenses. For example, two people may experience the same traumatic event, but each will respond to that event in uniquely different ways. It may negatively impact one person for years, contributing to the development of a substance use disorder or severe anxiety, etc., while the other person may not appear to be negatively affected at all. Many behavioral scientists concur that trauma is the most urgent public health issue we are currently facing; it is pervasive and can significantly increase one’s susceptibility to developing anger issues, compulsive behaviors, mental health and substance use disorders, and countless other physical, emotional and psychological problems ranging from anger management issues to high blood pressure and even a shortened life span. In summary, *trauma can affect every area of functioning and cause significant professional impairment, in addition to physical, psychological and behavioral impacts.*

Legal professionals are at particular risk of incurring vicarious (also known as secondary) trauma due to the cases and clients they deal with on a daily basis. This can lead to compassion fatigue and even post-traumatic stress disorder. Constant exposure to client trauma, gruesome photos and details, etc., can have the cumulative effect of causing harmful changes to a lawyer’s or judge’s view of the world, their clients and themselves. Like all traumatic responses, the effects of vicarious trauma exist on a continuum. Family and criminal defense lawyers as well as public defenders have the highest risk of sustaining vicarious trauma, as well as judges in specialty or problem-solving courts and those who have been on the bench for more than six years. When you factor in any other childhood or other

traumas that a legal professional may have sustained, the combination of vicarious and other traumas places many lawyers and judges at significant risk for the development of maladaptive coping skills, compulsive behaviors, and substance use and mental health disorders.

### **Genetics (Nature)**

Genetic-based vulnerability plays a large role in the risk of developing substance use and some mental health disorders (up to 50% of an individual's risk). Many different heritable genes lead to structural and functional brain development that is different from those who are not genetically susceptible. This explains, in part, why some people (approximately 1 in 10) who drink alcohol, use other mood altering substances, or gamble develop substance use or gambling disorders, while others do not. Some individuals suffer from anxiety, depression and other mood disorders that have affected other family members and previous generations (e.g., grandparents, parents, aunts and uncles, cousins, siblings). The burgeoning field of epigenetics has demonstrated that, even as adults, our environment and experiences can 'turn off' or 'turn on' certain genes that may also increase susceptibility to addiction and other mental health issues, irrespective of our genetic inheritance.

Neurological dysregulation, genetic, psychosocial, and environmental factors dynamically interact to ultimately lead to the development of substance use and mental health disorders. Sometimes the individual suffers from two or more of these illnesses, which complicates obtaining an accurate diagnosis and receiving proper treatment. It is estimated that over 50% of patients seeking treatment for a substance use disorder have a concurrent mental health disorder as well. Both must be treated, or neither will remit for long. These illnesses often require medical and psychological treatment and ongoing support. People in recovery from these issues live healthy, productive and fulfilling lives. In fact, up to 25 million people in the U.S. are in recovery from a substance use disorder!

Mild substance use disorders (SUD) are distinguished from addictions (i.e., severe substance use disorders), because they are missing one or more components of the diagnostic criteria. Mild and some moderate substance use and compulsive behavior disorders (e.g. eating, gambling, sex , etc.) may respond well to brief treatment, education, and/or risk reduction strategies, allowing the individual to decrease or cease the use/behavior without significant intervention or intensive, long-term treatment. Most moderate to severe substance use disorders (aka addiction) and compulsive behaviors require *significant*, coordinated and ongoing intervention, treatment, and support. Education and will power are not enough.

## Diagnosis of Substance Use Disorders (DSM-V criteria)

An individual must exhibit at least two of the following symptoms within a twelve-month period.

- ✓ 2-3 symptoms indicate a mild substance use disorder.
- ✓ 4-5 symptoms indicate a moderate substance use disorder.
- ✓ 6-11 symptoms indicate a severe substance use disorder.

1. Taking the substance in larger amounts or for longer than you are meant to.
2. Wanting to cut down or stop using the substance but not managing to.
3. Spending a lot of time getting, using, or recovering from use of the substance.
4. Cravings and urges to use the substance.
5. Not managing to do what you should at work, home, or school because of substance use.
6. Continuing to use, even when it causes problems in relationships.
7. Giving up important social, occupational, or recreational activities because of substance use.
8. Using substances repeatedly, even when it puts you in danger.
9. Continuing to use, even when you know you have a physical or psychological problem that could have been caused or made worse by the substance.
10. Needing more of the substance to get the effect you want (tolerance).
11. Development of withdrawal symptoms, which can be relieved by taking more of the substance.

Anyone who has experienced a problem with alcohol, drugs or gambling and whose family history includes addiction or mental illness should ideally avoid the use of alcohol, mood altering drugs, tranquilizers/sedatives, prescription sleep aids and opioid pain killers and gambling, if at all possible, to be safe. At the first sign of being preoccupied with or experiencing impaired control over drinking or other substance use, compulsive behaviors (e.g., gambling, shopping, internet use), and/or needing more and more of a behavior or substance over time to 'relax' or feel ok, the individual should be evaluated by a qualified and experienced substance use disorder or mental health specialist. Compliance with the specialist's recommendations for treatment is the safest course of action. *It is important to note that mental health issues are exacerbated by the disordered use of substances or compulsive behaviors.*

A comment upon "responsibility" and "accountability" - the individual did not willingly cause their illness and, in that sense, is not responsible for having developed the illness. As explained above, there are many causal factors over which the individual had no control. That said, however, the individual is accountable for his or her inappropriate behavior and/or professional misconduct. Being held accountable can be the starting point for recovery.

## **Depression**

Some similar brain changes occur in depression, whereby the more labile, 'emotional' limbic system (specifically the amygdala) becomes more activated than the 'higher thinking' prefrontal cortex (PFC), leading to persistent and overwhelming negative emotions, fear-based living, decreased cognitive function, impairment of memory, slowing of motor functions, etc. Depression can be a chronic disease, with 50-75% of adults experiencing more than one episode. Episodes last an average of six months.

Depression affects memory, the ability to learn, and emotions as well as the regulation of sleep and diet. Untreated depression disrupts every aspect of one's physical, mental and emotional well-being. The causes of depression vary from individual to individual, but the resulting dysregulation of the brain and day-to-day dysfunctional behavior are similar. Depression may be inherited and/or caused by long-term stress, emotional or physical trauma, illness or disease, or even a change in medication - nearly anything that substantially disrupts the chemistry and functioning of the brain.

Research suggests that chronic stress may play a role. When an individual perceives a threat,<sup>6</sup> it triggers a cascading release of hormones and chemicals in the body including cortisol (a steroid). Higher than normal levels of cortisol in the prefrontal cortex of the brain may be interfering with the PFC's ability to create new ideas, exercise good judgment, form action plans, execute those plans, and stay motivated to see them through to completion. High cortisol levels may also interfere with the frontal cortex's ability to dampen feelings of anxiety, dread, and fear emanating from the amygdala in the limbic system. (The amygdala and hippocampus work together in learning and in forming memories, especially those that involve a traumatic experience.) The chronically stressed (and/or traumatized) individual finds it difficult to think clearly, concentrate, organize their thoughts, make decisions, initiate or follow through on required action, and maintain a positive outlook on self and life in general. These are key indicators of depression.

As depression worsens, the individual may lose all sense of hope. Feelings of worthlessness and helplessness will increase because of their inability to function both as an individual and as an attorney. Feelings of anxiety and fear increase and generate strong feelings of distrust toward anyone with whom they come into contact. Isolation becomes a safe harbor, thereby protecting the individual from those who (to their way of thinking) can neither understand nor possibly help. The judge or attorney may not be aware of the fact that they are depressed, the effect it is having on their life, or how it affects those surrounding him. Other times the individual may be aware of the onset of symptoms of depression, but struggles with fully acknowledging it to self and others. In either case, the attorney is unable to ask for help or accept an offer for help. Approaching a judge or attorney who may be struggling with depression requires the utmost care. A misstep, although unintentional, will increase their levels of anxiety and distrust and make future attempts to help more difficult.

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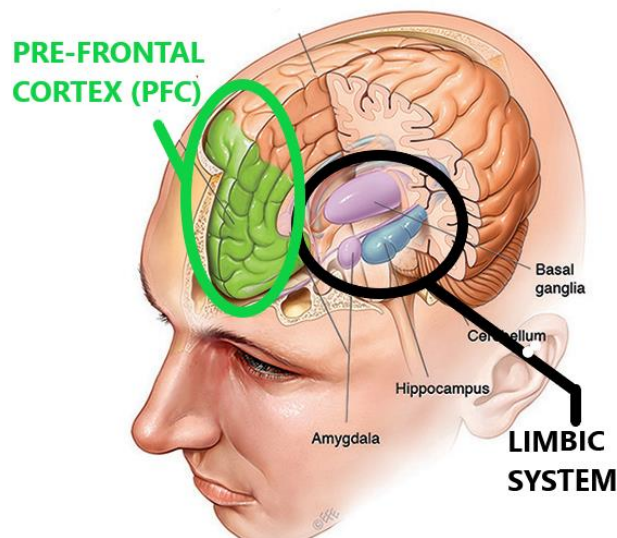
<sup>6</sup> Perceived threats are subjective or personal in nature – what is deemed threatening varies between individuals and may even vary from day to day within an individual depending upon his or her state of mind or physical health.

## Diagnosis of Depression (DSM-V criteria)

An individual must be experiencing symptoms nearly continuously for at least 2 weeks and have at least five (5) of the following, and one of the five must be either depressed mood or loss of interest or pleasure in activities *nearly every day*. These symptoms must cause the individual significant distress or impairment and must not be a result of substance use or another medical condition.

1. Depressed mood most of the day, almost every day, by your report or the report of others (e.g. sadness, hopelessness, persistent anxious or 'empty' feelings)
2. Significant weight loss or gain without effort
3. Markedly decreased interest or pleasure in all or most daily activities
4. Inability to sleep or oversleeping
5. Marked restlessness or somnolence, slow-moving, a reduction in physical movement that is observable by others
6. Fatigue or loss of energy
7. Feelings of worthlessness or excessive or inappropriate guilt
8. Diminished ability to think or concentrate, indecisiveness
9. Recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation with or without a plan, history of suicide attempt

## The Biology of Substance Use Disorders and Depression



The physiologic and subconscious underpinnings of addiction and many mental health disorders involve structural and functional brain changes, learning and memory, moods and emotions, thoughts and behaviors. Two major brain regions are primarily involved. The **pre-frontal cortex**, at the 'front' of the brain above our eyes, is the **most evolved** part of our brain; its development separates humans

from all other mammals. It is the primary driver of **rational thinking**, assessment of risks and consequences, impulse control, and adherence to social norms and personal values. The development of the PFC is what **makes you a good lawyer or judge**. It can also be thought of as a kind of **'brake pedal'** that helps to 'stop' us from acting out on our irrational and impulsive thoughts.

Conversely, **emotions** are assigned to events and stimuli and **instinctual behaviors** reside in a more **'primitive'** part of the human brain known as the **limbic system**, which is built to execute our basic human instincts for survival, including fight, flight or freeze. It is where **fear** is 'generated', **impulses** are created and **cravings and reward centers** lie. It is the **'gas pedal'** for impulses and behaviors and emotional reactions. It is all 'go' and no 'stop'. When activated and not tempered by the PFC, an individual is prone to **instant reaction** rather than measured response. This part of the brain compels you to freeze or run when, for extreme example, a lion jumps out in front of you. Your limbic system appropriately takes over (increased blood flow and function), overrides the PFC and you react without cognitive thought. Most people will just run as fast and as far as they can. If your rational brain (PFC) was dominating in that instant, it would waste precious moments contemplating risks and consequences and assessing the situation logically. By the time it 'figured out' a plan for escape, you would already have become the lion's lunch. The limbic system kept you alive by overriding the PFC and acting as the proverbial gas pedal. Once you find safety, your heart rate slows and you calm down and catch your breath, your limbic system function slows to baseline and your rational brain (PFC) comes back 'online' to help you navigate your normal day within social norms and constructs, using measured assessments and responses.

While the limbic system 'pushes' us to act and react quickly and on impulse (more childlike), the PFC acts like the 'adult' in the situation, by 'suggesting' that we 'pause' and respond after assessing risks and consequences.

Normally, these two regions of the brain are in constant communication, acting as a system of checks and balances to help us act within social norms, think and act logically, and accurately assess risks and consequences of our actions. In addiction and depression, blood flow and brain function increases in the impulsive, survival and fear-based emotional limbic system and decreases in the PFC. As a substance use disorder progresses, the rational PFC essentially goes 'offline' and loses nearly all communication and 'control' it normally has (as a 'brake pedal') on taming impulses, fears, negativity and reactive behaviors driven by the more 'childish' and instinctive/survival-based fight or flight area of the limbic system. In the case of someone with a severe alcohol use disorder, for example, the ingestion of alcohol becomes a basic survival need, comparable to oxygen or water, driving the individual to seek and consume the substance with minimal to no conscious thought and without regard for consequence as the limbic system takes over. The brain changes make it extraordinarily challenging for the individual with a severe substance use or mental health disorder to see that they have a problem until it is nearly too late.

## Treatment for Substance Use and Mental Health Disorders

Treatment and recovery plans are designed to promote changes in a person's behavior, general outlook on life and self, and they respond to daily challenges and upsets. Proper treatment helps an individual develop insight, coping skills and resiliency. There is no 'one' standalone or gold standard treatment that effectively 'cures' or controls substance use or mental health disorders. Each individual's treatment and recovery requires customized intervention and support. While treatment and recovery plans are uniquely tailored to each person, the one thing that they all require is time. Recovery from mental health and substance use challenges does not happen overnight. This is why it is crucial to receive an accurate health assessment, diagnosis, and treatment plan from a qualified mental health professional and to create an ongoing, long-term therapeutic alliance with a physician, a mental health provider, and with family and/or peers who support you in your recovery. Information gleaned from a mental health and/or substance use assessment is necessary to determine the appropriate type of treatment and level of care, which may include any, all, or a combination of the following:

- Short-term hospitalization to stabilize the mental health and/or substance use disorder
- Detoxification in a hospital or other controlled treatment setting
- Inpatient residential treatment
- Partial hospitalization (approximately 8hrs/day of treatment, but the patient lives at home)
- Intensive outpatient treatment (e.g., several multi-hour sessions per week)
- Outpatient treatment (e.g., variable number of shorter sessions per week)
- Individual therapy and/or group therapy
- Medication management (e.g., anti-depressants, mood stabilizers, and perhaps medication assisted therapies such as buprenorphine, methadone or naltrexone in select patients with co-occurring opioid and/or alcohol use disorder)
- Transcranial magnetic stimulation (TMS) therapy (for depression)
- Ongoing peer and/or professional support

For people with moderate to severe substance use disorders, effective treatment usually requires a combination of acute medical treatment, abstinence from all mind-altering drugs, including alcohol and marijuana, counseling, or psychotherapy (e.g., cognitive behavioral therapy [CBT], acceptance and commitment therapy [ACT] are commonly used), lifestyle changes, and a 12-Step or other peer support or recovery program (Please see our website [www.lclpa.org](http://www.lclpa.org) and click on the Resources tab for a comprehensive list of recovery support groups). For some, it also means using certain prescription medications, such as methadone, buprenorphine (aka Suboxone) or naltrexone (aka Vivitrol or Revia) to reduce cravings or block the effects of alcohol or opioids on the brain for the short and/or long term.



## **Conclusion**

Your phone call to LCL expressing concern about a judge, lawyer, family member or law student may be the first crucial step towards healing and restoration. Untreated mental health and substance use disorders are often progressive, leading to a shortened life expectancy. They lead to tremendous personal and professional devastation and collateral damage to others. They are complicated medical illnesses that require effective intervention followed by evidence-based acute and long-term treatment and support. The good news is that mental health and substance use disorders are highly treatable. Those who receive effective support and treatment go on to live fulfilling, healthy lives and have successful, rewarding careers. They are reliable, competent employees and colleagues who are often eager to share their experience, strength, and hope with others who may be struggling with similar issues. Their relationships and sense of self-efficacy are restored and even improved. Individuals in recovery become valuable assets in the workplace; their experience may give them a broader, more positive, grateful, and improved perspective on life and work. They are often more tolerant, open-minded, and focused than they were before their struggles began.

It is incredibly gratifying to help a colleague or a member of your family at a time when he or she needs you the most. The joy of seeing an individual recover and heal is immeasurable. Call LCL today; you could quite possibly save a life.

**LCL Confidential Helpline: 1-888-999-1941**

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