

Understanding Substance Use Disorders

Addiction. This is a loaded word with numerous negative connotations, and for good reason. It is also a word that is sometimes thrown out too casually — *i.e.*, people claiming to be “addicted” to Starbucks, their iPhones, and the like. While there may be something to be said about its ubiquity, addiction is a serious disease most often associated with drugs or alcohol.

The National Institute on Drug Abuse (www.drugabuse.gov) defines addiction as a “chronic relapsing brain disease that is characterized by compulsive drug seeking and use, despite harmful consequences.” While some people view an addict as having a character weakness, lacking discipline and perhaps even as self-centered or immoral, the reality is that drug addiction is a disease. While addiction can be distinguished from other diseases, it is still classified as a serious medical condition with specific signs and symptoms. Unfortunately, the effects of addiction are not just borne by the addict, but often extend to his or her family, friends and co-workers. Addiction is often the catalyst for divorce, tearing families apart, leaving destroyed lives in its wake, all of which can have a lasting negative impact on those who are closest.

How do we know when addiction is present? The signs and symptoms of addiction are set forth in the Diagnostic Statistical Manual of Mental Disorders (“DSM”).



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The DSM is a diagnostic manual published by the American Psychiatric Association which provides descriptions and symptoms of all mental disorders to assist practitioners/clinicians in making an objective assessment of symptoms that a patient may present. The fifth and most recent version, the DSM-5, was published in May of 2013.

However, if you search the DSM-5 for “addiction,” you won’t find it.

Instead, you will find “Substance Use Disorders” which address ten separate classes of drugs, including alcohol, tobacco, cannabis (marijuana), stimulants (amphetamine, methamphetamine and cocaine), hallucinogens (LSD and mushrooms/psilocybin) and opioids (heroin, oxycodone, etc.). Interestingly, “Caffeine Use Disorder” has been designated as a condition for further study – so there may be something to be explored about the Starbucks “addiction” mentioned above.

Substance Use Disorders themselves are a new concept for the DSM-5. Previously, the DSM was divided into two distinct categories — Substance Abuse and Substance Dependence — with Substance Dependence being the more severe diagnosis. The division between the two categories led to confusion and overlap in diagnoses. Now the two diagnoses have been combined into one overarching “Substance Use Disorder” classification.

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Congratulations to Claire R. McKenzie



Schiller DuCanto & Fleck LLP congratulates Senior Partner, Claire R. McKenzie, on being elected as a Maine Township Trustee.

Understanding Substance Use Disorders

The essential feature of each class of Substance Use Disorder is *continued* use of a substance despite significant substance-related problems. While each class of drugs is unique, a closer look at one of the most common Substance Use Disorders — Alcohol Use Disorder — provides helpful insight into the changes in the new diagnoses.

As noted above, Alcohol Abuse and Alcohol Dependence were previously two distinct disorders with differing criteria for each. In the past, if any one of the following criteria was met within the previous twelve months, it would warrant a diagnosis of Alcohol Abuse (provided that Alcohol Dependence was not already diagnosed):

- Has drinking (or being sick from drinking) interfered with fulfilling major obligations at work, school, or home?
- Has drinking resulted in getting into situations that increased chances of getting hurt (driving while drunk, engaging in unsafe sex)?
- Has there been more than one alcohol-related legal problem?
- Is there continued use despite these problems, which were either caused or exacerbated by alcohol?

For Alcohol Dependence, if three or more of the following were present in the past year, one would be classified as Alcohol Dependent:

- Increasing use of alcohol to achieve the desired effect or noticeably diminished effect from the same amount of drinks (otherwise known as “Tolerance”);
- Experiencing withdrawal symptoms like trouble sleeping, shakiness, nausea, or engaging in drinking to avoid such withdrawal symptoms;
- Drinking more quantities or for a longer period than was intended;
- Wanting to cut down on alcohol use but being unable to do so;
- Spending a lot of time obtaining alcohol, drinking alcohol or recovering from drinking;
- Cutting back on important, interesting or pleasurable activities in order to drink; or
- Continuing to drink despite knowing that a problem is likely to have been caused or exacerbated by the alcohol.

The DSM-5 has now combined Alcohol Abuse and Alcohol Dependence into Alcohol Use Disorder, with varying degrees of severity — mild, moderate, or severe, — depending on the number of criteria met. Now, anyone having the presence of any two or more of the following criteria would be classified as having an Alcohol Use Disorder (2-3 criteria would mean a “mild” diagnosis, 4 to 5 criteria would be a “moderate” diagnosis, and 6 or more criteria would be a “severe” diagnosis):

- Had times when you ended up drinking more, or longer than you intended?
- More than once wanted to cut down or stop drinking, or tried to, but couldn’t?
- Spent a lot of time drinking? Or being sick or getting over the aftereffects?
- Experienced craving — a strong need, or urge, to drink?
- Found that drinking — or being sick from drinking — often interfered with taking care of your home or family? Or caused job troubles? Or school problems?
- Continued to drink even though it was causing trouble with your family or friends?
- Given up or cut back on activities that were important or interesting to you, or gave you pleasure, in order to drink?
- More than once have been in situations while or after drinking that increased your chances of getting hurt (such as driving, swimming, using machinery, walking in a dangerous area, or having unsafe sex)?
- Continued to drink even though it was making you feel depressed or anxious or adding to another health problem? Or after having had a memory blackout?
- Had to drink much more than you once did to get the effect you want? Or found that your usual number of drinks had much less effect than before?
- Found that when the effects of alcohol were wearing off, you had withdrawal symptoms, such as trouble sleeping, shakiness, irritability, anxiety, depression, restlessness, nausea, or sweating? Or sensed things that were not there?”

See, The National Institute on Alcohol Abuse and Alcoholism - www.niaaa.nih.gov



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Another important change in the new Alcohol Use Disorder is that legal problems are no longer a criteria of a diagnosis, but craving alcohol (*i.e.* a strong need or urge to drink) has been added as a criteria.

While addiction can be devastating to a marriage, it doesn’t have to be. The good news is that all of these disorders can be treated, typically with some combination of counseling, inpatient/outpatient treatment, medication, supportive services, and peer groups such as Alcoholics Anonymous. The important thing is that if you suspect a loved one, friend, or even that you may suffer from a Substance Use Disorder, seek professional help.

Addressing Substance Use Disorders in Family Law Proceedings

In a family law proceeding where children are involved, substance use poses a significant complication in an already difficult and polarizing situation. Parenting time, driving privileges and potentially decision-making can be significantly impacted by allegations of a party's alcohol or drug use, including abuse of "legal" drugs like opiates. Sometimes drug or alcohol abuse is the catalyst to a family law proceeding, and sometimes the issue arises during the course of the case.

Any discussion of potential outcomes and solutions starts with a definition of the problem. *The Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5), is one of the most widely used and respected handbooks for mental health professionals to diagnose mental disorders, including alcohol and drug use disorders. Notably, the DSM-5 has abandoned the term "Substance Abuse" and now refers to "Substance Use Disorders," which are categorized as mild, moderate or severe based on meeting a certain number of diagnostic criteria.

According to the federal government's Substance Abuse and Mental Health Services Administration website (www.samhsa.gov), "Substance use disorders occur when the recurrent use of alcohol and/or drugs causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home. According to the DSM-5, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria."

When parties have minor children, judges take allegations of substance use disorder seriously, and they will often act on an emergency (immediate) basis to keep children safe until evaluation of a party with an alleged substance use disorder is completed. In practical terms, if a party believes that his partner's alcohol or drug use impairs her ability to care for a minor child, that party should file an emergency petition requesting the court's intervention for an evaluation and some form of oversight or supervision of parenting time until a treatment plan is implemented and the "using" party shows a significant track-record of sobriety.

For example, a court can order random drug testing or the use of "Soberlink," which monitors alcohol consumption using

a breathalyzer-type analysis through a mobile phone application. Alcohol generally leaves the body in a shorter timeframe than drugs, therefore alcohol testing may occur daily, or several times per day to ensure sobriety before and during parenting time. The court can also condition parenting time upon "clean" or "negative" test results for a certain period of time, and can prohibit a parent with a suspected substance use disorder from driving. A court can even require supervision of parenting time by a third party upon finding that

substance use poses a danger to the children, reporters of a parent's behavior.

Generally, where a party alleges substantial drug or alcohol use, the court will immediately appoint a legal representative for a child, called a *Guardian ad Litem* or Child's Representative.

This lawyer serves as the eyes and ears of the court, and is charged with speaking to both parties, third parties, and, where appropriate, to the child, to determine whether a problem exists and to make recommendations to the court about how to proceed in the minor's best interests.

A court may implement different restrictions for parents of very young children as opposed to older children, who are able to communicate problems. Courts and legal representatives must balance the benefits of parenting time against the danger to a child and concerns about turning children into reporters of a parent's behavior. This is a difficult job, and sometimes a court will implement several different potential solutions before settling on one that is in the family's best interest.

Family law proceedings are often polarizing, and parties may view allegations of substance use disorders and restrictions on parenting time as a punishment to a former spouse or partner. To the contrary, courts do not implement testing, evaluation or supervision as punitive measures. Rather, the goal of these measures is to facilitate sobriety and a track record of "negative" tests so that parenting time can be enjoyed unencumbered by supervision or monitoring.



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IN THE NEWS

Carlton R. Marcyan was profiled as Attorney of the Month in Attorney at Law Magazine.

Meighan A. Harmon was interviewed for a wealth management roundtable discussion on executive divorce titled "Financial Strategies, Advice for Negotiating the Breakup" published in Crain's Chicago Business.

Timothy M. Daw's article "Effort to seek work and maintenance" was published in the Modern Family column of the Chicago Daily Law Bulletin. He was also interviewed on WVON regarding child custody.

Anne Prenner Schmidt's blog "Same Sex Marriage and the Possible Correlation with Decreases in Teen Suicide Rates" was published on our Family Law Topics blog.

Gregory C. Maksimuk's blog "Five Tax Considerations When Divorcing" was published on our Family Law Topics blog.

Meighan A. Harmon was interviewed for the article "Finding Success in Succession Planning" published in Chicago Lawyer Magazine.

Kimberly A. Cook was the youngest candidate to be voted into the Economic Club of Chicago this cycle. She is also now a member of the UI Health Children's Hospital Advisory Council.

Patrick T. Ryan's article "Medicinal marijuana and parenting: How to thread the needle" was published in the Chicago Daily Law Bulletin. Patrick was also interviewed on WVON regarding the topic of marijuana use and parenting.

Karen Pinkert-Lieb received the 2016 10 Best Female Attorney - Client Satisfaction Award from the American Institute of Family Law Attorneys. Karen also received a designation of America's Top 100 Attorneys (Lifetime Achievement) (Illinois) by America's Top 100 publication.

Michele M. Jochner spoke at DePaul University College of Law on a "History of Women in the Law."

Anita M. Ventrelli was quoted in the article "Who gets the dog in the divorce?" published in the Chicago Tribune.

Amy N. Schiller's article "Taking sides politically ups ante for pro leagues" was published in the Chicago Daily Law Bulletin.

Brett M. Buckley was appointed to the Lake County Bar Association Facilities Remodel Fundraising Committee.

Schiller DuCanto & Fleck hosted The Women's Leadership Institute of the Chicago Bar Association Alliance for Women's presentation "Lessons in Leadership: A Conversation with Female Managing Partners" featuring Linda T. Coberly of Winston & Strawn and Rebecca Eisner of Mayer Brown.



The materials contained in this Newsletter are intended for general informational purposes only and not to be construed as legal advice or opinion.

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