

RECOGNIZING AND REPRESENTING CLIENTS WITH MENTAL HEALTH IMPAIRMENTS

Shari R. Gregory, LCSW, JD

Oregon Attorney Assistance Program

Assistant Director/ Attorney Counselor

Douglas S. Querin, JD, LPC, CADC I

Oregon Attorney Assistance Program

Attorney Counselor

Bryan R. Welch, JD, CADC I

Oregon Attorney Assistance Program

Attorney Counselor

Chapter 17

RECOGNIZING AND REPRESENTING CLIENTS WITH MENTAL HEALTH IMPAIRMENTS

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Recognizing and Representing Clients with Mental Health and Substance Use Impairments

Oregon Attorney Assistance Program
(503) 226-1057; 1 (800) 321-6227; www.oaap.org

I. Introduction:

Many of the issues that people choose to hire a lawyer to assist them with are highly stressful and anxiety provoking (e.g., divorce, custody, criminal charges, personal injuries, bankruptcy, immigration, employment disputes, etc.).

- A. A vital part of successful client representation and case handling requires that we be alert and responsive to our clients' mental and behavioral health conditions, including:
- Being generally familiar with common signs of mental health impairments and substance use disorders;
 - Being able to appropriately:
 - Distinguish between *normal* litigation-stress symptoms and other, more serious mental health conditions;
 - Work with clients who may be abusing alcohol or drugs;
 - Help clients cope with the stresses of their case;
 - Maintain our own health and well-being as lawyers trying to do the best for our clients.
- B. **Statistics:** It is likely that you will periodically encounter clients with mental and behavioral health conditions during your practice:
- In the United States, more than half of adults (57.4 %) will experience a mental health disorder in their lifetime.
 - Approximately 60% of adults needing mental healthcare services do *not* receive it; the reasons include:
 - Stigma associated with mental health disorders;
 - Unaware they need professional help or unaware that effective help is available;
 - Lack of resources for or access to needed mental health services.
 - Individuals often suffer from more than one mental health disorder simultaneously, or both mental health and substance use disorders.

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Some common mental & behavioral health disorders include:

<u>Type of mental health disorder</u>	<u>Annual % of U.S. adults</u>
Anxiety disorders	19.1%
Major depressive disorder	6.8%
Substance use disorder	8.0%
Bipolar disorders	2.8%
Eating disorders	2.1%
Schizophrenia	0.45%
Any mental disorder	19.6%

Substance Use In The U.S.

<u>Substance</u>	<u>Adult Population Reporting Use w/in Last 30 days</u>	
Marijuana	7.6%	(18,048,000)
Cocaine	0.6%	(1,505,000)
Inhalants	0.2%	(375,000)
Hallucinogens	0.5%	(1,179,000)
Heroin	0.1%	(277,000)
Non-medical use of Prescription drugs	2.5%	(5,935,000)

Alcohol

Binge Drinking (5 or more drinks during single occasion w/in last 30 days)

24.6% (58,500,000)

Heavy Drinking (5 or more drinks 5 or more times w/in last 30 days)

6.8% (16,200,000)

Further, an estimated 20.3 million adults aged 18 or older in 2013 had substance use disorder in the past year, which translates to 8.5 percent of adults. Of those, only approximately 10% received treatment. (Source: SAMHSA, National Survey on Drug Use and Health, 2013).

II. Recognizing Signs of Problematic Substance Use and Other Mental and Behavioral Health Issues

A. Comments - Red Flags common with problematic substance use:

- *Trust your instincts.*
- Continuation of problematic behaviors despite adverse consequences.
 - Legal problems (e.g., DUIs).
 - Social or interpersonal problems (e.g., domestic troubles).
 - High-risk behavior (e.g., driving at high speeds; driving while intoxicated).
 - Neglecting major responsibilities (work, school, home, etc.).
 - Reports of concern expressed by family, friends, or clients.
- Difficulty in controlling, or inability to control, substance use.
 - Taking the substance in larger amounts or for longer periods than intended.
 - Persistent desire or unsuccessful attempts to cut down or stop using.
- Failure to respond to lawyer and/or to attend to discovery requests and/or other case requirements.
- Withdrawal and Tolerance. *High tolerance* (having to drink/use more to achieve desired effect); signs of *withdrawal* in the absence of the substance (e.g., tremors, anxiety, nausea, lethargy, etc.).

B. Red Flags: Substance Use or Mental Health

- Isolation and/or reclusive behavior – especially if there is no family/support system.
- Paralysis (by anxiety, fear, insecurity, etc.) in handling work/personal responsibilities.
 - Having difficulty making contact.
 - No response to calls, emails, texts, etc.
 - Telephone message box full.
 - Mail not picked up or opened.
 - Excessively passive behavior - especially when inaction may have significant consequences.
- The confused, disorganized person:
 - Difficulty understanding, following instructions.

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- Confused thinking.
 - Missed appointments; failure to follow through.
 - Unresponsiveness, unable to reach.
 - Weak excuses for unavailability or inappropriate conduct.
 - Extreme anxiety over their case, or performing tasks related to their case.
 - Decline in personal hygiene or appearance.
 - Decline in cognitive functioning.
 - Significant memory problems.
 - Difficulty understanding issues.
 - Inappropriate/bizarre behavior.
 - Paranoid, exaggerated suspicion or sense of persecution.
 - Phone calls, emails, texts at odd hours (e.g., 2 a.m.).
 - Stressful Personal or Family Situations.
 - Known/suspected financial difficulties or bankruptcy.
 - Pending or potential domestic/relationship problems.
 - Pending or potential criminal charges.
 - Personal or family history of emotional or behavioral disorders.
 - Significantly ill parent, spouse, child, close friend, etc.
 - The hostile/distrustful person:
 - Excessive fear or paranoia; clearly delusional beliefs.
 - Grossly exaggerated anger.
 - Unusually low capacity tolerating frustration; highly emotionally reactive
 - Extreme highs and lows in mood
 - Difficulty responding to and bouncing back from adverse events-often brought on by or triggered by their case
 - The excessive needy/demanding person.
 - Talk or behavior suggesting intent to harm self, loss of hope, or desire to no longer be alive.
- C. Substance use related cognitive impairments can persist for weeks or months after substance use has stopped, depending on the amount and length of use; or, can be permanent.

D. **CAGE Screen for Substance Use Disorders:** Yes answers to two or more of the following indicates a need for further screening and assessment.

Cutting Down: Have you tried to cut down or quit drinking/drug use?

Annoyance: Has anyone annoyed you by suggesting that you quit or cut down?

Guilt: Have you ever felt guilty about your drinking/drug use?

Eye-Opener: Have you ever needed a drink or a drug to “get started” in the morning?

III. Stress and Mental Health

A. Mental Health Impairment As A Response To Stress/Threat.

- Stress can exacerbate existing substance use or mental health impairments.
 - **Stress-diathesis model:** this theory purports that an individual’s biological vulnerabilities, or predispositions, to particular psychological disorders can be triggered by stressful life events.
- Stress can cause our prefrontal cortex to go “off-line” and limit our response flexibility.
 - **Fight/Flight/Freeze:** Our activated sympathetic nervous system takes **prefrontal cortex functions off-line by design** because our response to threat has to be fast and instinctual to survive – we don’t have time to analyze.
 - **Prefrontal Cortex functions:** body regulation, attuned communication, emotional balance, response flexibility, empathy, insight, fear-extinction, intuition and morality.
- People can struggle with symptoms but not meet criteria for diagnosis.

B. Stress can cause mental health or physical health issues.

- Anxiety disorder and PTSD can be seen as fight/flight/freeze locked in the “on” position.
- The long-term activation of the stress-response system — and the subsequent overexposure to cortisol and other stress hormones — can disrupt almost all your body's processes. This puts you at increased risk of numerous health problems, including:
 - Anxiety
 - Depression
 - Digestive problems

- Headaches
- Heart disease
- Sleep problems
- Weight gain
- Memory and concentration impairment

C. Comments, Tips and Reminders For Helping A Potentially Impaired Client

- You do not have to be a mental health expert to assist an impaired client.
- In most cases, if you have concerns about a potentially impaired client, there are likely others who have similar concerns.
- In most cases, people who emotionally implode or get into serious personal trouble were previously known by others to be struggling; many of the signs of a problem have existed for some time and have been observed by others.
- **Doing something is generally better than doing nothing**
 - Personal contact (phone or in-person) is generally better than emails & texts.
 - Emails & texts are generally better than no contact.
- People who are struggling are often unwilling to seek assistance; they are embarrassed, do not want to impose on others, or are in denial.

D. Having a Conversation with a Potentially Impaired Client

- When the potentially impaired person is someone you do not feel comfortable dealing with directly, look for alternatives (e.g., OAAP).
- Avoid “ganging-up.” Especially for an initial conversation, having a private conversation with one or two people present who can express concern, and can discuss behaviors they have observed, is usually more helpful.
- Focus on *behaviors that you have observed*. Avoid second-hand reports if possible.
- Compassion & candor can go together; be direct (“I’m really concerned about you. You seem to be really struggling with _____. Can I help you?”).
- Be prepared to encounter *ambivalence, denial, rationalization, justification and blame*.
 - Listening to a client deny what to you is an obvious problem can be very frustrating. Continuing to focus the conversation on specific observed problems (e.g. missed appointments, unanswered phone calls) rather than arguing can be helpful.

- If your client's issue is substance use, they may want to make a change, but are also likely getting some benefit from the behavior ("checking-out", anxiety relief, etc.). They may rationalize or justify their behavior while at the same time acknowledging a problem on some level. Try to talk to the part of them that wants to change or recognizes the problem.
- Have a plan in case your client is ready to get help – a phone number to call or a person to talk to. ("Here is a number for someone who can help...can we make the call right now?").
 - Suggest assessment by specialist
 - Suggest private counseling or treatment (inpatient or outpatient)
 - Suggest support groups (AA, NA, Women for Sobriety, Smart Recovery, Alcoholics Victorious, etc.) for substance use.

IV. Self-Harm, Depression, Substance Abuse and Self-Harm

- Depression and substance use can place a person at greater risk of self-harm.
- A previous attempt is a risk factor that a person is more likely to try again or complete suicide.

A. Potential Suicide Warning Signs

- Threatening to hurt or kill oneself or talking about wanting to hurt or kill oneself.
- Looking for ways to kill oneself by seeking access to firearms, available pills, or other means.
- Talking about feeling hopeless, seeing no reason for living, or having no sense of purpose.
- Feeling rage or uncontrolled anger or seeking revenge.
- Acting reckless or engaging in risky activities – seemingly without thinking.
- Talking about feeling trapped or feeling in unbearable pain – like there is no way out.
- Increasing alcohol or drug use.
- Isolating and/or withdrawing from friends, family, and society.
- Giving away prized possessions or other personal belongings, or taking unusual actions to put personal or work affairs in order.
- Feeling anxious, agitated, or unable to sleep or sleeping significantly more than usual.
- Experiencing dramatic mood changes.

B. Responding To Warning Signs:

- Expressions of suicidal thoughts or behaviors should always be taken seriously. *Saying something is better than saying nothing.*
- If a person exhibits warning signs ask the person the following questions:
 - “Are you having thoughts of suicide?”
 - or
 - “Are you thinking about killing yourself?”
- If the person answers yes, ask these three questions:
 - **Have you decided how you would kill yourself?**
 - **Have you decided when you would do it?**
 - **Have you taken any steps to secure the things you would need to carry out your plan?**
- If possible do not leave a person alone if they have a plan and a means to carry it out.
- Help the person eliminate access to firearms or other means, including unsupervised access to medications.
- Additionally, the National Suicide Prevention Lifeline recommends the following when someone is threatening suicide:
 - Be direct. Talk openly and matter-of-factly about suicide.
 - Be willing to listen. Allow expressions of feelings. Accept the feelings.
 - Be non-judgmental. Don’t debate whether suicide is right or wrong or whether feelings are good or bad. Don’t lecture on the value of life.
 - Get involved. Become available. Show interest and support.
 - Don’t dare the person to do it.
 - Don’t act shocked. This will put distance between you.
 - Don’t be sworn to secrecy. Seek support.
 - Offer hope that alternatives are available but do not offer glib reassurance.
 - Take action. Remove means, such as guns or stockpiled pills.
 - Get help from persons or agencies specializing in crisis intervention and suicide prevention.

C. Resources.

- **National Suicide Prevention Helpline:** 1-800-273-TALK (8255), available 24/7.
- **Multnomah County Crisis Line** (503) 988-4888, available 24/7.
- **OAAP** (503) 226-1057; (800) 321.6227.
- **QPR** (Question, Persuade, Refer) – Suicide prevention training available online at <https://www.qprinstitute.com/>. It's inexpensive and takes about an hour to complete.

V. Assisting Clients with Mental Health or Substance Use Impairments

Clients who have mental health or substance use impairments often have trauma as part of their lived experience. Recognizing the role that trauma plays in shaping their identities and the way they relate to others, or the world around them, can help better prepare you in working with them.

A. Adopting a Trauma-Informed Approach

A trauma-informed approach means learning and understanding trauma, developing your sensitivity to how certain actions or omissions can lead to trauma or re-traumatization, and modifying your legal practice in a manner that minimizes the likelihood of trauma for yourself and your clients.

- The Substance Abuse and Mental Health Services Administration (SAMHSA) defines a trauma-informed approach as a program, organization, or system that “*realizes* the widespread impact of trauma and understands potential paths for recovery; *recognizes* the signs and symptoms of trauma in clients, families, staff, and others involved with the system; *responds* by fully integrating knowledge about trauma into policies, procedures, and practices; and seeks to actively *resist re-traumatization*.” This could be accomplished by adhering to six principles: 1) Safety; 2) Trustworthiness and transparency; 3) Peer Support; 4) Collaboration and Mutuality; 5) Empowerment, voice and choice; and 6) Cultural, historical and gender issues.
- Specifically, understanding how trauma can impact your clients’ behavior can improve your attorney-client relationship, and allow you to provide effective representation as well as legal advocacy without the likelihood of re-traumatizing them. Additionally, possessing a working knowledge of trauma will help you identify and avoid secondary trauma (or vicarious trauma) for yourself.

B. Understanding Trauma in Clients:

- Individual trauma is defined by SAMHSA as resulting “from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being” (SAMHSA, 2012, p. 7). It is when a person is stressed to a point that their ability to cope is overwhelmed and the person has no alternative means of coping, leading to impaired functioning (*ex. panic attacks, severe depression, or alcohol addiction*).
- Clients with a trauma history may have difficulty:
 - Trusting others
 - Processing information
 - Communicating
 - Regulating emotions
 - Adequately responding to stressful situation
- Clients who are consciously or unconsciously reminded of their past trauma may cause them to feel as if their safety is threatened. Clients who feel unsafe can be reactive and respond in ways that are reflective of being in a fight, flight or freeze mode. Some of their reactions may include becoming loud or combative, refusing to answer sensitive questions or attempting to leave a meeting or court hearing or mentally shutting down and not paying attention (National Child Traumatic Stress Network, 2017).

C. Trauma-Informed Approach in Practice

When assisting clients with mental health or substance use impairments using a trauma-informed approach, it is important to focus on their safety, the manner of communication and their support system:

- *Physical and Psychological Safety*: When clients feel physically and psychologically unsafe, their focus is self-protection and survival. Create an office space that is warm, inviting and safe to connect with them. If you are unable to meet at your office, select quiet space with minimal distractions and away from others who will make your client feel threatened. Be mindful of potential barriers for clients with mental health or substance use challenges in accessing your legal services.

- *Communication*: Show empathy towards your client's mental health or substance use impairment. Listen to their concerns without judgment. Be understanding and respond with understanding. Allow for a dialogue that gives space for mutual influence, in which you permit the client to influence you by telling their story and offering guidance or advise in return. Allow for a co-creation of mutually satisfying outcome to empower in making decisions. Be transparent by informing your client the purpose of a meeting, what to expect during a meeting, how long it will take, and invite questions from them. Explain the court process.
- *Client Support*: The absence of social support only leads to emotional pain while the affirmation of existing relationship can facilitate a client's recovery and growth from trauma. Help clients build their network of support by exploring and expanding their support system. Ask about extended family, friend, counselor, therapist, or pastor who can support them through this process. Consider if additional referrals to professionals may be helpful and appropriate in addressing mental health or substance use issues.

D. Self-Care: Avoiding Burnout, Compassionate Fatigue & Secondary Trauma

Working with clients who have mental health or substance use issues can personally and professionally impact you as a lawyer. Among the difficulties you may encounter overtime are burnout, compassion fatigue and secondary traumatic stress (secondary trauma).

- *Burnout* is "the physical and emotional exhaustion that workers can experience when they have low job satisfaction and feel powerless and overwhelmed at work" (Mathieu, 2012, p. 10).
- *Compassion fatigue* is the emotional and physical exhaustion that professionals can experience from working in the capacity of helping others, in which there is a gradual erosion of empathy, hope, and compassion for others and themselves (Mathieu, 2012).
- *Secondary trauma* refers to the experience of trauma following repeated exposure to another person's trauma.

Remembering to take the time to check in with your physical, emotional, and mental well-being is important to avoid burnout, compassion, fatigue or secondary trauma. This means paying attention to your body and recognizing your own stress symptoms, particularly when you are overloaded and overwhelmed or need to establish firmer boundaries with your clients. Engaging in regular practice of self-care, in which you participate in activities that replenish your energy or sustains you, and ensuring it is a priority, will allow you to continue your work and remain available to your clients.

Some Final Tips

- When appropriate, learn client's medical and mental health history at intake and whether they are taking prescription medication for a mental health and trauma issues, substance use issues, his/her ability to read, and, whether they have had head injuries or other physical health issues that can impair their ability to function well.
 - Get a release to talk with mental health providers, doctors, and support people if necessary.
 - Urge clients to continue medications and treatment.
- Manage your client's expectations:
 - Pro-active communication can alleviate some of your clients' anxieties and keep you from being inundated with extra phone calls and emails.
 - Service intended: Time, costs, anticipated results.
 - Keep your staff in the loop.
- Establish/clarify your role as their lawyer:
 - Clearly define your role and limits to your representation, using tools like engagement letter/agreement.
 - Clarify and respect boundaries.
 - Help client analyze and understand his/her case.
 - Provide possible approaches, case strategies.
 - Give advice on the consequences of potential action/inaction.
 - Client decides the course of action to be taken on his/her case but you can positively influence their choices if you develop trust and understanding of them.
- Consult and debrief with others on difficult cases.
- Contact the **Oregon Attorney Assistance Program**:

503-226-1057; 1-800-321-OAAP (6227)

www.aaap.org

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THE OAAP OFFERS HELP FOR...

- Problem alcohol, drug, and/or substance use
- Recovery support
- Burnout and stress management
- Career transition and satisfaction
- Depression, anxiety, and other mental health issues
- Compulsive disorders including gambling, sex, and Internet addiction
- Procrastination
- Relationship issues
- Retirement planning
- Time management

ARE THERE ANY COSTS?

All of our services are free, except for a nominal fee charged for some workshops and seminars. If additional professional help is needed, we can serve as a referral resource.

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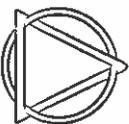
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OAAP ATTORNEY COUNSELORS

Shari R. Gregory, LCSW, JD
OAAP Assistant Director
sharig@oaap.org

Karen A. Neri, JD, MA-MCFC Candidate
karenn@oaap.org

Douglas S. Querin, JD, LPC, CADCI
douglassq@oaap.org

Bryan R. Welch, JD, CADCI
bryanw@oaap.org

503-226-1057

1-800-321-OAAP (6227)

520 SW Yamhill, Suite 1050
Portland, Oregon 97204

OAAP EXECUTIVE DIRECTOR



BARBARA S. FISHLER
503-684-7425
barbaraf@oaap.org

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WHAT IS THE OREGON ATTORNEY ASSISTANCE PROGRAM?

The Oregon Attorney Assistance Program (OAAP) is a *confidential* service funded by the Professional Liability Fund for all Oregon lawyers and judges. We provide assistance with and referral for problem alcohol, drug, and/or other substance use; stress management; time management; career transition; compulsive disorders (including problem gambling); relationships; depression; anxiety; and other issues that affect the ability of a lawyer or judge to function effectively. The OAAP is also available to Oregon law students.

OAAP attorney counselors are lawyers and professionally trained counselors. As a result, we are able to establish a unique rapport with members of the legal community.

COMPLETELY CONFIDENTIAL

All communications with the OAAP are completely confidential and will not affect your standing with the Professional Liability Fund or the Oregon State Bar. No information will be disclosed to any person, agency, or organization outside the OAAP without the consent of the lawyer or judge accessing the program. Contacts with us are kept strictly confidential pursuant to ORS 9.568, PLF Policies 6.150 - 6.300, OSB Bylaw Article 24, ORPC 8.3(c)(3), Oregon Code of Judicial Conduct 3.11 and Judicial Code of Conduct for United States Judges Canon 3B(5). The only exceptions are: 1) to avert a serious, imminent threat to your health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

OAAP Attorney Counselors



SHARI R. GREGORY, LCSW, JD, is the OAAP assistant director and an OAAP attorney counselor and group facilitator. She is a graduate of Wurzweiler School of Social Work (MSW 1987) and Rutgers School of Law (JD 1992). Ms. Gregory received her Certificate of Business Management from Portland State University (2003) and her license in clinical social work (LCSW 2010). She is experienced in career and life transition counseling; relationship counseling; mental health and trauma counseling; crisis intervention; stress management; organizational challenges; and alcohol/drug and addiction counseling. She worked as a criminal defense attorney prior to coming to the OAAP in 1999.

Contact:

503-226-1057, ext. 14 • sharig@oaap.org



DOUGLAS S. QUERIN, JD, LPC, CADCI, is an OAAP attorney counselor and group facilitator. He is a graduate of the University of Oregon School of Law (JD) and George Fox University (MA in Counseling). He was in the private practice of law as a trial lawyer for over 25 years. In recovery since 2002, Mr. Querin joined the OAAP staff in 2006. He is a Licensed Professional Counselor (LPC) and a Certified Alcohol and Drug Counselor (CADCI). Mr. Querin is experienced in mental health counseling; alcohol and drug counseling; stress/anxiety management; lawyer work-life balance; and relationship counseling. He is the 2008 and 2013 recipient of the Oregon Counseling Association's Distinguished Service Award and a former member of the Oregon Board of Licensed Professional Counselors and Therapists (2013-16).

Contact:

503-226-1057, ext. 12 • douglasq@oaap.org



KAREN A. NERI, JD, is an OAAP attorney counselor and group facilitator and is a 2006 graduate of New College of California, School of Law. She is in the process of obtaining her MA in Marriage, Couple, and Family Counseling at George Fox University, a degree that will prepare her for attaining dual licensure as a Professional Counselor (LPC) and Marriage and Family Therapist (LMFT). Prior to joining the OAAP staff in 2018, Ms. Neri practiced law with a focus on family law, personal injury, and general civil litigation.

Contact:

503-226-1057, ext. 11 • karenn@oaap.org



BRYAN R. WELCH, JD, CADCI, is an OAAP attorney counselor and group facilitator. He is a graduate of Northwestern School of Law at Lewis and Clark College (JD 2003) and a Certified Alcohol and Drug Counselor (CADCI). Prior to joining the OAAP staff in 2015, he was in the private practice of law for 12 years, primarily in family law and family mediation. In addition to his work at the OAAP, his experience includes providing drug and alcohol counseling services for a court-mandated DUII treatment program and for a local nonprofit working with people impacted by homelessness, poverty, and addiction. He has been in recovery since 2001, and has been actively involved in the recovery community, including the OAAP, since 2001.

Contact:

503-226-1057, ext. 19 • bryanw@oaap.org